

1 **STATE FACILITIES MANAGEMENT AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David G. Buxton**

5 House Sponsor: Brady Brammer

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the management of state facilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ eliminates the State Building Board;
- 13 ▶ gives duties of the former State Building Board to the Division of Facilities
14 Construction and Management and the Department of Government Operations;
- 15 ▶ increases the limit of the value of property that the Division of Facilities
16 Construction and Management may acquire without legislative approval from
17 \$250,000 to \$500,000;
- 18 ▶ with respect to code provisions dealing with the disposal of property owned by the
19 Division of Facilities Construction and Management, increases the limit of the value
20 of property not subject to those code provisions from \$250,000 to \$500,000;
- 21 ▶ modifies provisions relating to the supervision and control of the allocation of space
22 for institutions of higher education and courts;
- 23 ▶ provides that the disposition of property owned by the Division of Facilities
24 Construction and Management in connection with the establishment of a state liquor
25 store or the construction of student housing is not subject to provisions otherwise
26 applicable to the disposition of division-owned property;
- 27 ▶ for a diagnostic, treatment, parole, probation, or other secured facility project,
28 increases the threshold for that project from \$250,000 to \$500,000 to trigger a

29 requirement for the director of the Division of Facilities Construction and Management to
30 notify a local government entity affected by the project; and

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **17B-2a-818.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152

39 **19-1-206**, as last amended by Laws of Utah 2020, Chapters 32 and 152

40 **26-29-1**, as last amended by Laws of Utah 2001, Chapter 73

41 **26-29-3**, as last amended by Laws of Utah 2001, Chapter 73

42 **39-2-1**, as last amended by Laws of Utah 2010, Chapter 286

43 **53B-2a-112 (Superseded 07/01/22)**, as last amended by Laws of Utah 2020, Chapter

44 365

45 **53B-2a-112 (Effective 07/01/22)**, as last amended by Laws of Utah 2021, Second

46 Special Session, Chapter 1

47 **53B-2a-113**, as last amended by Laws of Utah 2020, Chapter 365

48 **53B-2a-117**, as last amended by Laws of Utah 2020, Chapters 152 and 365

49 **53B-7-101**, as last amended by Laws of Utah 2020, Chapter 365

50 **53B-7-103**, as last amended by Laws of Utah 2021, Chapter 187

51 **53B-21-104**, as last amended by Laws of Utah 2020, Chapter 365

52 **53B-22-204**, as last amended by Laws of Utah 2020, Chapter 152

53 **53E-3-706**, as last amended by Laws of Utah 2019, Chapter 186

54 **63A-5b-102**, as last amended by Laws of Utah 2021, Chapter 187

55 **63A-5b-303**, as enacted by Laws of Utah 2020, Chapter 152

- 56 [63A-5b-402](#), as enacted by Laws of Utah 2020, Chapter 152
- 57 [63A-5b-403](#), as last amended by Laws of Utah 2021, Chapter 187
- 58 [63A-5b-404](#), as enacted by Laws of Utah 2020, Chapter 152
- 59 [63A-5b-503](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 60 [63A-5b-601](#), as enacted by Laws of Utah 2020, Chapter 152
- 61 [63A-5b-603](#), as enacted by Laws of Utah 2020, Chapter 152
- 62 [63A-5b-604](#), as enacted by Laws of Utah 2020, Chapter 152
- 63 [63A-5b-802](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 64 [63A-5b-803](#), as last amended by Laws of Utah 2020, Chapter 365
- 65 [63A-5b-806](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 66 [63A-5b-901](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 67 [63A-5b-902](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 68 [63A-5b-904](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 69 [63A-5b-905](#), as last amended by Laws of Utah 2021, Chapters 84 and 345
- 70 [63A-5b-907](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 71 [63A-5b-910](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 72 [63A-5b-1001](#), as enacted by Laws of Utah 2020, Chapter 152
- 73 [63A-5b-1003](#), as renumbered and amended by Laws of Utah 2020, Chapter 152
- 74 [63A-5b-1104](#), as enacted by Laws of Utah 2020, Chapter 152
- 75 [63B-1-101](#), as last amended by Laws of Utah 2003, Chapter 2
- 76 [63B-1-304](#), as last amended by Laws of Utah 2020, Chapter 152
- 77 [63C-9-403](#), as last amended by Laws of Utah 2020, Chapters 32 and 152
- 78 [63G-6a-103](#), as last amended by Laws of Utah 2021, Chapters 179, 179, 344, and 345
- 79 [63G-6a-109](#), as last amended by Laws of Utah 2020, Chapter 257
- 80 [63G-6a-204](#), as last amended by Laws of Utah 2020, Chapters 257 and 354
- 81 [63G-6a-303](#), as last amended by Laws of Utah 2021, Chapter 344
- 82 [63G-6a-1302](#), as last amended by Laws of Utah 2020, Chapter 257

- 83 [63H-6-103](#), as last amended by Laws of Utah 2021, Chapters 33, 84, and 345
- 84 [63H-6-108](#), as last amended by Laws of Utah 2016, Third Special Session, Chapter 2
- 85 [63J-4-401](#), as last amended by Laws of Utah 2021, Chapter 382
- 86 [72-6-107.5](#), as last amended by Laws of Utah 2020, Chapters 32 and 152
- 87 [78A-5-111](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 88 [79-2-404](#), as last amended by Laws of Utah 2020, Chapters 32 and 152

89 ENACTS:

- 90 [63A-5b-907.5](#), Utah Code Annotated 1953

91 REPEALS:

- 92 [63A-5b-201](#), as last amended by Laws of Utah 2021, Chapter 382
- 93 [63A-5b-202](#), as last amended by Laws of Utah 2021, Chapters 187 and 344
- 94 [63A-5b-203](#), as enacted by Laws of Utah 2020, Chapter 152



96 *Be it enacted by the Legislature of the state of Utah:*

97 Section 1. Section **17B-2a-818.5** is amended to read:

98 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
99 **coverage.**

100 (1) As used in this section:

101 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
102 related to a single project.

103 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

104 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
105 "operative" who:

106 (i) works at least 30 hours per calendar week; and

107 (ii) meets employer eligibility waiting requirements for health care insurance, which
108 may not exceed the first day of the calendar month following 60 days after the day on which
109 the individual is hired.

- 110 (d) "Health benefit plan" means:
- 111 (i) the same as that term is defined in Section 31A-1-301; or
- 112 (ii) an employee welfare benefit plan:
- 113 (A) established under the Employee Retirement Income Security Act of 1974, 29
- 114 U.S.C. Sec. 1001 et seq.;
- 115 (B) for an employer with 100 or more employees; and
- 116 (C) in which the employer establishes a self-funded or partially self-funded group
- 117 health plan to provide medical care for the employer's employees and dependents of the
- 118 employees.
- 119 (e) "Qualified health coverage" means the same as that term is defined in Section
- 120 26-40-115.
- 121 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
- 122 (g) "Third party administrator" or "administrator" means the same as that term is
- 123 defined in Section 31A-1-301.
- 124 (2) Except as provided in Subsection (3), the requirements of this section apply to:
- 125 (a) a contractor of a design or construction contract entered into by the public transit
- 126 district on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or
- 127 greater than \$2,000,000; and
- 128 (b) a subcontractor of a contractor of a design or construction contract entered into by
- 129 the public transit district on or after July 1, 2009, if the subcontract is in an aggregate amount
- 130 equal to or greater than \$1,000,000.
- 131 (3) The requirements of this section do not apply to a contractor or subcontractor
- 132 described in Subsection (2) if:
- 133 (a) the application of this section jeopardizes the receipt of federal funds;
- 134 (b) the contract is a sole source contract; or
- 135 (c) the contract is an emergency procurement.
- 136 (4) A person that intentionally uses change orders, contract modifications, or multiple

137 contracts to circumvent the requirements of this section is guilty of an infraction.

138 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
139 public transit district that the contractor has and will maintain an offer of qualified health
140 coverage for the contractor's employees and the employee's dependents during the duration of
141 the contract by submitting to the public transit district a written statement that:

142 (i) the contractor offers qualified health coverage that complies with Section
143 26-40-115;

144 (ii) is from:

145 (A) an actuary selected by the contractor or the contractor's insurer;

146 (B) an underwriter who is responsible for developing the employer group's premium
147 rates; or

148 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
149 an actuary or underwriter selected by a third party administrator; and

150 (iii) was created within one year before the day on which the statement is submitted.

151 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
152 shall provide the actuary or underwriter selected by an administrator, as described in
153 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
154 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
155 requirements of qualified health coverage.

156 (ii) A contractor may not make a change to the contractor's contribution to the health
157 benefit plan, unless the contractor provides notice to:

158 (A) the actuary or underwriter selected by an administrator as described in Subsection
159 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
160 Subsection (5)(a) in compliance with this section; and

161 (B) the public transit district.

162 (c) A contractor that is subject to the requirements of this section shall:

163 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that

164 is subject to the requirements of this section shall obtain and maintain an offer of qualified
165 health coverage for the subcontractor's employees and the employees' dependents during the
166 duration of the subcontract; and

167 (ii) obtain from a subcontractor that is subject to the requirements of this section a
168 written statement that:

169 (A) the subcontractor offers qualified health coverage that complies with Section
170 26-40-115;

171 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
172 underwriter who is responsible for developing the employer group's premium rates, or if the
173 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
174 underwriter selected by an administrator; and

175 (C) was created within one year before the day on which the contractor obtains the
176 statement.

177 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as
178 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
179 accordance with an ordinance adopted by the public transit district under Subsection (6).

180 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
181 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

182 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
183 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
184 penalties in accordance with an ordinance adopted by the public transit district under
185 Subsection (6).

186 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
187 an offer of qualified health coverage described in Subsection (5)(a).

188 (6) The public transit district shall adopt ordinances:

189 (a) in coordination with:

190 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

- 191 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 192 (iii) the [~~State Building Board~~] Division of Facilities Construction and Management in
193 accordance with Section 63A-5b-607;
- 194 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- 195 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 196 (b) that establish:
- 197 (i) the requirements and procedures a contractor and a subcontractor shall follow to
198 demonstrate compliance with this section, including:
- 199 (A) that a contractor or subcontractor's compliance with this section is subject to an
200 audit by the public transit district or the Office of the Legislative Auditor General;
- 201 (B) that a contractor that is subject to the requirements of this section shall obtain a
202 written statement described in Subsection (5)(a); and
- 203 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
204 written statement described in Subsection (5)(c)(ii);
- 205 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
206 violates the provisions of this section, which may include:
- 207 (A) a three-month suspension of the contractor or subcontractor from entering into
208 future contracts with the public transit district upon the first violation;
- 209 (B) a six-month suspension of the contractor or subcontractor from entering into future
210 contracts with the public transit district upon the second violation;
- 211 (C) an action for debarment of the contractor or subcontractor in accordance with
212 Section 63G-6a-904 upon the third or subsequent violation; and
- 213 (D) monetary penalties which may not exceed 50% of the amount necessary to
214 purchase qualified health coverage for employees and dependents of employees of the
215 contractor or subcontractor who were not offered qualified health coverage during the duration
216 of the contract; and
- 217 (iii) a website on which the district shall post the commercially equivalent benchmark,

218 for the qualified health coverage identified in Subsection (1)(e), that is provided by the
219 Department of Health, in accordance with Subsection 26-40-115(2).

220 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
221 or subcontractor who intentionally violates the provisions of this section is liable to the
222 employee for health care costs that would have been covered by qualified health coverage.

223 (ii) An employer has an affirmative defense to a cause of action under Subsection
224 (7)(a)(i) if:

225 (A) the employer relied in good faith on a written statement described in Subsection
226 (5)(a) or (5)(c)(ii); or

227 (B) a department or division determines that compliance with this section is not
228 required under the provisions of Subsection (3).

229 (b) An employee has a private right of action only against the employee's employer to
230 enforce the provisions of this Subsection (7).

231 (8) Any penalties imposed and collected under this section shall be deposited into the
232 Medicaid Restricted Account created in Section 26-18-402.

233 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
234 required by this section:

235 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
236 or contractor under:

237 (i) Section 63G-6a-1602; or

238 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

239 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
240 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
241 or construction.

242 (10) An administrator, including an administrator's actuary or underwriter, who
243 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
244 coverage of a contractor or subcontractor who provides a health benefit plan described in

245 Subsection (1)(d)(ii):

246 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
247 unless the administrator commits gross negligence in preparing the written statement;

248 (b) is not liable for any error in the written statement if the administrator relied in good
249 faith on information from the contractor or subcontractor; and

250 (c) may require as a condition of providing the written statement that a contractor or
251 subcontractor hold the administrator harmless for an action arising under this section.

252 Section 2. Section **19-1-206** is amended to read:

253 **19-1-206. Contracting powers of department -- Health insurance coverage.**

254 (1) As used in this section:

255 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
256 related to a single project.

257 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

258 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
259 "operative" who:

260 (i) works at least 30 hours per calendar week; and

261 (ii) meets employer eligibility waiting requirements for health care insurance, which
262 may not exceed the first day of the calendar month following 60 days after the day on which
263 the individual is hired.

264 (d) "Health benefit plan" means:

265 (i) the same as that term is defined in Section [31A-1-301](#); or

266 (ii) an employee welfare benefit plan:

267 (A) established under the Employee Retirement Income Security Act of 1974, 29
268 U.S.C. Sec. 1001 et seq.;

269 (B) for an employer with 100 or more employees; and

270 (C) in which the employer establishes a self-funded or partially self-funded group
271 health plan to provide medical care for the employer's employees and dependents of the

272 employees.

273 (e) "Qualified health coverage" means the same as that term is defined in Section
274 26-40-115.

275 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

276 (g) "Third party administrator" or "administrator" means the same as that term is
277 defined in Section 31A-1-301.

278 (2) Except as provided in Subsection (3), the requirements of this section apply to:

279 (a) a contractor of a design or construction contract entered into by, or delegated to, the
280 department, or a division or board of the department, on or after July 1, 2009, if the prime
281 contract is in an aggregate amount equal to or greater than \$2,000,000; and

282 (b) a subcontractor of a contractor of a design or construction contract entered into by,
283 or delegated to, the department, or a division or board of the department, on or after July 1,
284 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

285 (3) This section does not apply to contracts entered into by the department or a division
286 or board of the department if:

287 (a) the application of this section jeopardizes the receipt of federal funds;

288 (b) the contract or agreement is between:

289 (i) the department or a division or board of the department; and

290 (ii) (A) another agency of the state;

291 (B) the federal government;

292 (C) another state;

293 (D) an interstate agency;

294 (E) a political subdivision of this state; or

295 (F) a political subdivision of another state;

296 (c) the executive director determines that applying the requirements of this section to a
297 particular contract interferes with the effective response to an immediate health and safety
298 threat from the environment; or

299 (d) the contract is:
300 (i) a sole source contract; or
301 (ii) an emergency procurement.

302 (4) A person that intentionally uses change orders, contract modifications, or multiple
303 contracts to circumvent the requirements of this section is guilty of an infraction.

304 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
305 executive director that the contractor has and will maintain an offer of qualified health
306 coverage for the contractor's employees and the employees' dependents during the duration of
307 the contract by submitting to the executive director a written statement that:

308 (i) the contractor offers qualified health coverage that complies with Section
309 [26-40-115](#);

310 (ii) is from:

311 (A) an actuary selected by the contractor or the contractor's insurer;

312 (B) an underwriter who is responsible for developing the employer group's premium
313 rates; or

314 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
315 an actuary or underwriter selected by a third party administrator; and

316 (iii) was created within one year before the day on which the statement is submitted.

317 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
318 shall provide the actuary or underwriter selected by an administrator, as described in
319 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
320 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
321 requirements of qualified health coverage.

322 (ii) A contractor may not make a change to the contractor's contribution to the health
323 benefit plan, unless the contractor provides notice to:

324 (A) the actuary or underwriter selected by an administrator, as described in Subsection
325 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in

326 Subsection (5)(a) in compliance with this section; and

327 (B) the department.

328 (c) A contractor that is subject to the requirements of this section shall:

329 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
330 is subject to the requirements of this section shall obtain and maintain an offer of qualified
331 health coverage for the subcontractor's employees and the employees' dependents during the
332 duration of the subcontract; and

333 (ii) obtain from a subcontractor that is subject to the requirements of this section a
334 written statement that:

335 (A) the subcontractor offers qualified health coverage that complies with Section
336 [26-40-115](#);

337 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
338 underwriter who is responsible for developing the employer group's premium rates, or if the
339 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
340 underwriter selected by an administrator; and

341 (C) was created within one year before the day on which the contractor obtains the
342 statement.

343 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
344 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
345 accordance with administrative rules adopted by the department under Subsection (6).

346 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
347 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

348 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
349 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
350 penalties in accordance with administrative rules adopted by the department under Subsection
351 (6).

352 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain

353 an offer of qualified health coverage described in Subsection (5)(a).

354 (6) The department shall adopt administrative rules:

355 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

356 (b) in coordination with:

357 (i) a public transit district in accordance with Section 17B-2a-818.5;

358 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

359 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
360 accordance with Section 63A-5b-607;

361 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

362 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

363 (vi) the Legislature's Administrative Rules Review Committee; and

364 (c) that establish:

365 (i) the requirements and procedures a contractor and a subcontractor shall follow to
366 demonstrate compliance with this section, including:

367 (A) that a contractor or subcontractor's compliance with this section is subject to an
368 audit by the department or the Office of the Legislative Auditor General;

369 (B) that a contractor that is subject to the requirements of this section shall obtain a
370 written statement described in Subsection (5)(a); and

371 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
372 written statement described in Subsection (5)(c)(ii);

373 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
374 violates the provisions of this section, which may include:

375 (A) a three-month suspension of the contractor or subcontractor from entering into
376 future contracts with the state upon the first violation;

377 (B) a six-month suspension of the contractor or subcontractor from entering into future
378 contracts with the state upon the second violation;

379 (C) an action for debarment of the contractor or subcontractor in accordance with

380 Section 63G-6a-904 upon the third or subsequent violation; and

381 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
382 of the amount necessary to purchase qualified health coverage for an employee and the
383 dependents of an employee of the contractor or subcontractor who was not offered qualified
384 health coverage during the duration of the contract; and

385 (iii) a website on which the department shall post the commercially equivalent
386 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
387 the Department of Health, in accordance with Subsection 26-40-115(2).

388 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
389 or subcontractor who intentionally violates the provisions of this section is liable to the
390 employee for health care costs that would have been covered by qualified health coverage.

391 (ii) An employer has an affirmative defense to a cause of action under Subsection
392 (7)(a)(i) if:

393 (A) the employer relied in good faith on a written statement described in Subsection
394 (5)(a) or (5)(c)(ii); or

395 (B) the department determines that compliance with this section is not required under
396 the provisions of Subsection (3).

397 (b) An employee has a private right of action only against the employee's employer to
398 enforce the provisions of this Subsection (7).

399 (8) Any penalties imposed and collected under this section shall be deposited into the
400 Medicaid Restricted Account created in Section 26-18-402.

401 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
402 required by this section:

403 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
404 or contractor under:

405 (i) Section 63G-6a-1602; or

406 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

407 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
408 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
409 or construction.

410 (10) An administrator, including an administrator's actuary or underwriter, who
411 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
412 coverage of a contractor or subcontractor who provides a health benefit plan described in
413 Subsection (1)(d)(ii):

414 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
415 unless the administrator commits gross negligence in preparing the written statement;

416 (b) is not liable for any error in the written statement if the administrator relied in good
417 faith on information from the contractor or subcontractor; and

418 (c) may require as a condition of providing the written statement that a contractor or
419 subcontractor hold the administrator harmless for an action arising under this section.

420 Section 3. Section **26-29-1** is amended to read:

421 **26-29-1. Buildings and facilities to which chapter applies -- Standards available**
422 **to interested parties -- Division of Facilities Construction and Management staff to**
423 **advise, review, and approve plans when possible.**

424 (1) (a) The standards in this chapter apply to all buildings and facilities used by the
425 public that are constructed or remodeled in whole or in part by the use of state funds, or the
426 funds of any political subdivision of the state.

427 (b) All of those buildings and facilities constructed in Utah after May 12, 1981, shall
428 conform to the standard prescribed in this chapter except buildings, facilities, or portions of
429 them, not intended for public use, including:

430 (i) caretaker dwellings;

431 (ii) service buildings; and

432 (iii) heating plants.

433 (2) This chapter applies to temporary or emergency construction as well as permanent

434 buildings.

435 (3) (a) The standards established in this chapter apply to the remodeling or alteration of
436 any existing building or facility within the jurisdictions set forth in this chapter where the
437 remodeling or alteration will affect an area of the building or facility in which there are
438 architectural barriers for persons with a physical disability.

439 (b) If the remodeling involves less than 50% of the space of the building or facility,
440 only the areas being remodeled need comply with the standards.

441 (c) If remodeling involves 50% or more of the space of the building or facility, the
442 entire building or facility shall be brought into compliance with the standards.

443 (4) (a) All individuals and organizations are encouraged to apply the standards
444 prescribed in this chapter to all buildings used by the public, but that are financed from other
445 than public funds.

446 (b) The [~~State Building Board~~] Division of Facilities Construction and Management
447 shall:

448 (i) make the standards established by this chapter available to interested individuals
449 and organizations; and

450 (ii) upon request and to the extent possible, make available the services of the [~~building~~
451 ~~board~~] Division of Facilities Construction and Management staff to advise, review, and
452 approve plans and specifications in order to comply with the standards of this chapter.

453 Section 4. Section **26-29-3** is amended to read:

454 **26-29-3. Basis for standards.**

455 The standards of this chapter are the current edition of planning and design criteria to
456 prevent architectural barriers for the aged and persons with a physical disability, as
457 promulgated by the [~~State Building Board~~] Division of Facilities Construction and
458 Management.

459 Section 5. Section **39-2-1** is amended to read:

460 **39-2-1. Members -- A body corporate -- Powers -- Expenses.**

- 461 (1) ~~[(a)]~~ The State Armory Board;
- 462 (a) shall consist of the governor, the ~~[chair of the State Building Board,]~~ executive
- 463 director of the Department of Government Operations, and the adjutant general~~[-];~~;
- 464 (b) ~~[It shall be]~~ is a body corporate with perpetual succession~~[-];~~;
- 465 (c) ~~[It]~~ may have and use a common seal, and under the name ~~[aforesaid]~~ of the State
- 466 Armory Board, may sue and be sued, and contract and be contracted with~~[-];~~;
- 467 (d) ~~[It]~~ may take and hold by purchase, gift, devise, grant, or bequest real and personal
- 468 property required for ~~[its use:]~~ the use of the State Armory Board;
- 469 (e) ~~[It may also]~~ may convert property received by gift, devise, or bequest, and not
- 470 suitable for ~~[its]~~ the uses of the State Armory Board, into other property so available, or into
- 471 money~~[-];~~ and
- 472 (f) is a public corporation whose property is exempt from taxes and assessments.
- 473 (2) (a) The board ~~[shall have power to]~~ may:
- 474 ~~[(a)]~~ (i) borrow money for the purpose of erecting arsenals and armories upon the sole
- 475 credit of the real property to which ~~[it]~~ the State Armory Board has the legal title; and
- 476 ~~[(b)]~~ (ii) ~~[may secure such loans]~~ secure loans described in Subsection (2)(a)(i) by
- 477 mortgage upon [such property:] property to which the State Armory Board has legal title.
- 478 (b) (i) ~~[the mortgaged property]~~ Property mortgaged for a loan as provided in
- 479 Subsection (2)(a) shall be the sole security for [such loan; and] the loan.
- 480 (ii) ~~[no]~~ No deficiency judgment shall be made, rendered, or entered against the board
- 481 upon the foreclosure of ~~[the mortgage; provided, however, that]~~ a mortgage under Subsection
- 482 (2)(a).
- 483 (iii) The board may not mortgage property in one city ~~[shall not be mortgaged]~~ for the
- 484 purpose of obtaining money for the erection of armories in any other place. ~~[Said board shall~~
- 485 ~~be deemed a public corporation, and its property shall be exempt from all taxes and~~
- 486 ~~assessments.]~~
- 487 (3) A member may not receive compensation or benefits for the member's service, but

488 may receive per diem and travel expenses in accordance with:

489 (a) Section 63A-3-106;

490 (b) Section 63A-3-107; and

491 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
492 63A-3-107.

493 Section 6. Section 53B-2a-112 (Superseded 07/01/22) is amended to read:

494 **53B-2a-112 (Superseded 07/01/22). Technical colleges -- Relationships with other**
495 **public and higher education institutions -- Agreements -- Priorities -- New capital**
496 **facilities.**

497 (1) As used in this section, "higher education institution" means:

498 (a) Utah State University for:

499 (i) Bridgerland Technical College;

500 (ii) Tooele Technical College; and

501 (iii) Uintah Basin Technical College;

502 (b) Weber State University for:

503 (i) Ogden-Weber Technical College; and

504 (ii) Davis Technical College;

505 (c) Utah Valley University for Mountainland Technical College;

506 (d) Southern Utah University for Southwest Technical College; and

507 (e) Dixie State University for Dixie Technical College.

508 (2) A technical college may enter into agreements:

509 (a) with other higher education institutions to cultivate cooperative relationships; or

510 (b) with other public and higher education institutions to enhance career and technical
511 education within the technical college's region.

512 (3) Before a technical college develops new instructional facilities, the technical
513 college shall give priority to:

514 (a) maintaining the technical college's existing instructional facilities for both

515 secondary and adult students;

516 (b) coordinating with the president of the technical college's higher education
517 institution and entering into any necessary agreements to provide career and technical
518 education to secondary and adult students that:

519 (i) maintain and support existing higher education career and technical education
520 programs; and

521 (ii) maximize the use of existing higher education facilities; and

522 (c) developing cooperative agreements with school districts, charter schools, other
523 higher education institutions, businesses, industries, and community and private agencies to
524 maximize the availability of career and technical education instructional facilities for both
525 secondary and adult students.

526 (4) (a) Before submitting a funding request pertaining to new capital facilities and land
527 purchases to the board, a technical college shall:

528 (i) ensure that all available instructional facilities are maximized in accordance with
529 Subsections (3)(a) through (c); and

530 (ii) coordinate the request with the president of the technical college's higher education
531 institution, if applicable.

532 (b) The ~~[State Building Board]~~ Division of Facilities Construction and Management
533 shall make a finding that the requirements of this section are met before the ~~[State Building~~
534 ~~Board]~~ Division of Facilities Construction and Management may consider a funding request
535 from the board pertaining to new capital facilities and land purchases for a technical college.

536 (c) A technical college may not construct, approve the construction of, plan for the
537 design or construction of, or consent to the construction of a career and technical education
538 facility without approval of the Legislature.

539 (5) Before acquiring new fiscal and administrative support structures, a technical
540 college shall:

541 (a) review the use of existing public or higher education administrative and accounting

542 systems, financial record systems, and student and financial aid systems for the delivery of
543 career and technical education in the region;

544 (b) determine the feasibility of using existing systems; and

545 (c) with the approval of the technical college board of trustees and the board, use the
546 existing systems.

547 Section 7. Section **53B-2a-112 (Effective 07/01/22)** is amended to read:

548 **53B-2a-112 (Effective 07/01/22). Technical colleges -- Relationships with other**
549 **public and higher education institutions -- Agreements -- Priorities -- New capital**
550 **facilities.**

551 (1) As used in this section, "higher education institution" means:

552 (a) Utah State University for:

553 (i) Bridgerland Technical College;

554 (ii) Tooele Technical College; and

555 (iii) Uintah Basin Technical College;

556 (b) Weber State University for:

557 (i) Ogden-Weber Technical College; and

558 (ii) Davis Technical College;

559 (c) Utah Valley University for Mountainland Technical College;

560 (d) Southern Utah University for Southwest Technical College; and

561 (e) Utah Tech University for Dixie Technical College.

562 (2) A technical college may enter into agreements:

563 (a) with other higher education institutions to cultivate cooperative relationships; or

564 (b) with other public and higher education institutions to enhance career and technical
565 education within the technical college's region.

566 (3) Before a technical college develops new instructional facilities, the technical
567 college shall give priority to:

568 (a) maintaining the technical college's existing instructional facilities for both

569 secondary and adult students;

570 (b) coordinating with the president of the technical college's higher education
571 institution and entering into any necessary agreements to provide career and technical
572 education to secondary and adult students that:

573 (i) maintain and support existing higher education career and technical education
574 programs; and

575 (ii) maximize the use of existing higher education facilities; and

576 (c) developing cooperative agreements with school districts, charter schools, other
577 higher education institutions, businesses, industries, and community and private agencies to
578 maximize the availability of career and technical education instructional facilities for both
579 secondary and adult students.

580 (4) (a) Before submitting a funding request pertaining to new capital facilities and land
581 purchases to the board, a technical college shall:

582 (i) ensure that all available instructional facilities are maximized in accordance with
583 Subsections (3)(a) through (c); and

584 (ii) coordinate the request with the president of the technical college's higher education
585 institution, if applicable.

586 (b) The [~~State Building Board~~] Division of Facilities Construction and Management
587 shall make a finding that the requirements of this section are met before the [~~State Building~~
588 ~~Board~~] Division of Facilities Construction and Management may consider a funding request
589 from the board pertaining to new capital facilities and land purchases for a technical college.

590 (c) A technical college may not construct, approve the construction of, plan for the
591 design or construction of, or consent to the construction of a career and technical education
592 facility without approval of the Legislature.

593 (5) Before acquiring new fiscal and administrative support structures, a technical
594 college shall:

595 (a) review the use of existing public or higher education administrative and accounting

596 systems, financial record systems, and student and financial aid systems for the delivery of
597 career and technical education in the region;

598 (b) determine the feasibility of using existing systems; and

599 (c) with the approval of the technical college board of trustees and the board, use the
600 existing systems.

601 Section 8. Section **53B-2a-113** is amended to read:

602 **53B-2a-113. Technical colleges -- Leasing authority -- Lease-purchase agreements**
603 **-- Report.**

604 (1) A technical college may enter into a lease with other higher education institutions,
605 school districts, charter schools, state agencies, or business and industry for a term of:

606 (a) one year or less with the approval of the technical college board of trustees; or

607 (b) more than one year with the approval of the board if:

608 (i) the Legislature approves funding for the lease prior to a technical college entering
609 into the lease; or

610 (ii) the lease agreement includes language that allows termination of the lease without
611 penalty.

612 (2) (a) A technical college may enter into a lease-purchase agreement if:

613 (i) there is a long-term benefit to the state;

614 (ii) the project is included in the technical college master plan;

615 (iii) the lease-purchase agreement includes language that allows termination of the
616 lease;

617 (iv) the lease-purchase agreement is approved by the technical college board of trustees
618 and the board; and

619 (v) the lease-purchase agreement is:

620 (A) reviewed by the Division of Facilities Construction and Management; and

621 [~~(B) reviewed by the State Building Board; and~~]

622 [~~(C)~~] (B) approved by the Legislature.

- 623 (b) An approval under Subsection (2)(a) shall include a recognition of:
624 (i) all parties, dates, and elements of the agreement;
625 (ii) the equity or collateral component that creates the benefit; and
626 (iii) the options dealing with the sale and division of equity.

627 (3) (a) Each technical college shall provide an annual lease report to the board that
628 details each of the technical college's leases, annual costs, location, square footage, and
629 recommendations for lease continuation.

630 (b) The board shall compile and distribute an annual combined lease report for all
631 technical colleges to the Division of Facilities Construction and Management and to others
632 upon request.

633 (4) The board shall use the annual combined lease report in determining planning,
634 utilization, and budget requests.

635 Section 9. Section **53B-2a-117** is amended to read:

636 **53B-2a-117. Legislative approval -- Capital development projects --**
637 **Prioritization.**

638 (1) As used in this section:

639 (a) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
640 as published by the Bureau of Labor Statistics of the United States Department of Labor.

641 (b) "Fund" means the Technical Colleges Capital Projects Fund created in Section
642 [53B-2a-118](#).

643 (2) In accordance with this section, a technical college is required to receive legislative
644 approval in an appropriations act for a dedicated project or a nondedicated project.

645 (3) In accordance with Section [53B-2a-112](#), a technical college shall submit to the
646 board a proposal for a funding request for each dedicated project or nondedicated project for
647 which the technical college seeks legislative approval.

648 (4) The board shall:

649 (a) review each proposal submitted under Subsection (3) to ensure that the proposal

650 complies with Section [53B-2a-112](#);

651 (b) based on the results of the board's review under Subsection (4)(a), create:

652 (i) a list of approved dedicated projects, prioritized in accordance with Subsection (6);

653 and

654 (ii) a list of approved nondedicated projects, prioritized in accordance with Subsection

655 (6); and

656 (c) submit the lists described in Subsection (4)(b) to:

657 (i) the governor;

658 (ii) the Infrastructure and General Government Appropriations Subcommittee;

659 (iii) the Higher Education Appropriations Subcommittee; and

660 [~~(iv) the State Building Board for the State Building Board's;~~]

661 (iv) the Division of Facilities Construction and Management for a:

662 (A) recommendation, for the list described in Subsection (4)(b)(i); or

663 (B) recommendation and prioritization, for the list described in Subsection (4)(b)(ii).

664 (5) A dedicated project:

665 (a) is subject to the [~~State Building Board's~~] recommendation of the Division of

666 Facilities Construction and Management as described in Section [63A-5b-403](#); and

667 (b) is not subject to the [~~State Building Board's~~] prioritization of the Division of

668 Facilities Construction and Management as described in Section [63A-5b-403](#).

669 (6) (a) Subject to Subsection (7), the board shall prioritize funding requests for capital

670 development projects described in this section based on:

671 (i) growth and capacity;

672 (ii) effectiveness and support of critical programs;

673 (iii) cost effectiveness;

674 (iv) building deficiencies and life safety concerns; and

675 (v) alternative funding sources.

676 (b) The board shall establish:

677 (i) how the board will measure each factor described in Subsection (6)(a); and
678 (ii) procedures for prioritizing funding requests for capital development projects
679 described in this section.

680 (7) (a) Subject to Subsection (7)(b), and in accordance with Subsection (6), the board
681 may annually prioritize:

682 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less
683 than \$7,000,000;

684 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
685 \$7,000,000 but less than \$14,000,000; or

686 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
687 \$14,000,000.

688 (b) For each calendar year beginning on or after January 1, 2020, the dollar amounts
689 described in Subsection (7)(a) shall be adjusted by an amount equal to the percentage
690 difference between:

691 (i) the Consumer Price Index for the 2019 calendar year; and

692 (ii) the Consumer Price Index for the previous calendar year.

693 (8) (a) A technical college may request operations and maintenance funds for a capital
694 development project approved under this section.

695 (b) The Legislature shall consider a technical college's request described in Subsection
696 (8)(a).

697 Section 10. Section **53B-7-101** is amended to read:

698 **53B-7-101. Combined requests for appropriations -- Board review of operating**
699 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**
700 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

701 (1) As used in this section:

702 (a) "Higher education institution" or "institution" means an institution of higher
703 education listed in Section **53B-1-102**.

704 (b) "Research university" means the University of Utah or Utah State University.

705 (2) (a) Subject to Subsection (3), the board shall recommend a combined appropriation
706 for the operating budgets of higher education institutions for inclusion in a state appropriations
707 act.

708 (b) The board's combined budget recommendation shall include:

709 (i) employee compensation;

710 (ii) mandatory costs, including building operations and maintenance, fuel, and power;

711 (iii) performance funding described in Part 7, Performance Funding;

712 (iv) statewide and institutional priorities, including scholarships, financial aid, and
713 technology infrastructure; and

714 (v) enrollment growth.

715 (c) The board's recommendations shall be available for presentation to the governor
716 and to the Legislature at least 30 days before the convening of the Legislature, and shall include
717 schedules showing the recommended amounts for each institution, including separately funded
718 programs or divisions.

719 (d) The recommended appropriations shall be determined by the board only after the
720 board has reviewed the proposed institutional operating budgets, and has consulted with the
721 various institutions and board staff in order to make appropriate adjustments.

722 (3) In the combined request for appropriation, the board shall differentiate between
723 appropriations requested for academic education and appropriations requested for technical
724 education.

725 (4) (a) Institutional operating budgets shall be submitted to the board at least 90 days
726 before the convening of the Legislature in accordance with procedures established by the board.

727 (b) Except as provided in Sections 53B-2a-117 and 53B-22-204, funding requests
728 pertaining to capital facilities and land purchases shall be submitted in accordance with
729 procedures prescribed by the [~~State Building Board~~] Division of Facilities Construction and
730 Management.

731 (5) (a) The budget recommendations of the board shall be accompanied by full
732 explanations and supporting data.

733 (b) The appropriations recommended by the board shall be made with the dual
734 objective of:

735 (i) justifying for higher education institutions appropriations consistent with their
736 needs, and consistent with the financial ability of the state; and

737 (ii) determining an equitable distribution of funds among the respective institutions in
738 accordance with the aims and objectives of the statewide master plan for higher education.

739 (6) (a) The board shall request a hearing with the governor on the recommended
740 appropriations.

741 (b) After the governor delivers his budget message to the Legislature, the board shall
742 request hearings on the recommended appropriations with the Higher Education
743 Appropriations Subcommittee.

744 (c) If either the total amount of the state appropriations or its allocation among the
745 institutions as proposed by the Legislature or the Higher Education Appropriations
746 Subcommittee is substantially different from the recommendations of the board, the board may
747 request further hearings with the Legislature or the Higher Education Appropriations
748 Subcommittee to reconsider both the total amount and the allocation.

749 (7) The board may devise, establish, periodically review, and revise formulas for the
750 board's use and for the use of the governor and the Higher Education Appropriations
751 Subcommittee in making appropriation recommendations.

752 (8) (a) The board shall recommend to each session of the Legislature the minimum
753 tuitions, resident and nonresident, for each institution which it considers necessary to
754 implement the budget recommendations.

755 (b) The board may fix the tuition, fees, and charges for each institution at levels the
756 board finds necessary to meet budget requirements.

757 (9) Money allocated to each institution by legislative appropriation may be budgeted in

758 accordance with institutional work programs approved by the board, provided that the
759 expenditures funded by appropriations for each institution are kept within the appropriations
760 for the applicable period.

761 (10) The dedicated credits, including revenues derived from tuitions, fees, federal
762 grants, and proceeds from sales received by the institutions are appropriated to the respective
763 institutions to be used in accordance with institutional work programs.

764 (11) An institution may do the institution's own purchasing, issue the institution's own
765 payrolls, and handle the institution's own financial affairs under the general supervision of the
766 board.

767 (12) If the Legislature appropriates money in accordance with this section, the money
768 shall be distributed to the board and higher education institutions to fund the items described in
769 Subsection (2)(b).

770 Section 11. Section **53B-7-103** is amended to read:

771 **53B-7-103. Board designated state educational agent for federal contracts and**
772 **aid -- Individual research grants -- Powers of institutions or foundations under**
773 **authorized programs.**

774 (1) (a) The board is the designated state educational agency authorized to negotiate and
775 contract with the federal government and to accept financial or other assistance from the
776 federal government or any of its agencies in the name of and in behalf of the state of Utah,
777 under terms and conditions as may be prescribed by congressional enactment designed to
778 further higher education.

779 (b) Nothing in this chapter alters or limits the authority of the [~~State Building Board~~]
780 Division of Facilities Construction and Management to act as the designated state agency to
781 administer programs on behalf of and accept funds from federal, state, and other sources, for
782 capital facilities for the benefit of higher education.

783 (2) (a) Subject to policies and procedures established by the board, an institution of
784 higher education and the institution of higher education's employees may apply for and receive

785 grants or research and development contracts within the educational role of the recipient
786 institution.

787 (b) A program described in Subsection (2)(a) may be conducted by and through the
788 institution, or by and through any foundation or organization that is established for the purpose
789 of assisting the institution in the accomplishment of the institution's purposes.

790 (3) An institution or the institution's foundation or organization engaged in a program
791 authorized by the board may do the following:

792 (a) enter into contracts with federal, state, or local governments or their subsidiary
793 agencies or departments, with private organizations, companies, firms, or industries, or with
794 individuals for conducting the authorized programs;

795 (b) subject to the approval of the controlling state agency, conduct authorized programs
796 within any of the penal, corrective, or custodial institutions of this state and engage the
797 voluntary participation of inmates in those programs;

798 (c) accept contributions, grants, or gifts from, and enter into contracts and cooperative
799 agreements with, any private organization, company, firm, industry, or individual, or any
800 governmental agency or department, for support of authorized programs within the educational
801 role of the recipient institution, and may agree to provide matching funds with respect to those
802 programs from resources available to the institution; and

803 (d) retain, accumulate, invest, commit, and expend the funds and proceeds from
804 programs funded under Subsection (3)(c), including the acquisition of real and personal
805 property reasonably required for their accomplishment, except that no portion of the funds and
806 proceeds may be diverted from or used for purposes other than those authorized or undertaken
807 under Subsection (3)(c), or may ever become a charge upon or obligation of the state of Utah or
808 the general funds appropriated for the normal operations of the institution unless otherwise
809 permitted by law.

810 (4) (a) Except as provided in Subsection (4)(b), all contracts and research or
811 development grants or contracts requiring the use or commitment of facilities, equipment, or

812 personnel under the control of an institution of higher education are subject to the approval of
813 the board.

814 (b) (i) The board may delegate the approval of a contract or grant described in
815 Subsection (4)(a) to an institution of higher education board of trustees.

816 (ii) If the board makes a delegation described in Subsection (4)(b)(i), the board of
817 trustees shall annually report to the board on all approved contracts or grants.

818 Section 12. Section **53B-21-104** is amended to read:

819 **53B-21-104. Deposit of bond proceeds -- Division of Facilities Construction and**
820 **Management responsibilities and approval.**

821 (1) The board treasurer or other fiscal officer, with the approval of the state treasurer,
822 deposits the proceeds from the sale of bonds under this chapter into a special Construction
823 Trust Fund Account established in compliance with the State Money Management Act of 1974.

824 (2) The proceeds are credited to the board on behalf of the institution of higher
825 education for which the bonds were issued.

826 (3) The proceeds are kept in a separate fund and used solely for the purpose for which
827 they were authorized by the board.

828 (4) The [~~State Building Board~~] Division of Facilities Construction and Management
829 makes all contracts and executes all instruments which it considers necessary to provide for the
830 projects referred to in Section **53B-21-101**.

831 (5) The proceeds in the special Construction Trust Fund Account shall be disbursed
832 only upon receipt of written statements supported by itemized estimates and claims presented
833 to the Division of Facilities Construction and Management as provided in the resolution
834 authorizing the issuance of the bonds.

835 Section 13. Section **53B-22-204** is amended to read:

836 **53B-22-204. Funding request for capital development project -- Legislative**
837 **approval -- Board prioritization, approval, and review.**

838 (1) In accordance with this section, an institution is required to receive legislative

839 approval in an appropriations act for a dedicated project or a nondedicated project.

840 (2) An institution shall submit to the board a proposal for a funding request for each

841 dedicated project or nondedicated project for which the institution seeks legislative approval.

842 (3) The board shall:

843 (a) review each proposal submitted under Subsection (2) to ensure the proposal:

844 (i) is cost effective and an efficient use of resources;

845 (ii) is consistent with the institution's mission and master plan; and

846 (iii) fulfills a critical institutional facility need;

847 (b) based on the results of the board's review under Subsection (3)(a), create:

848 (i) a list of approved dedicated projects; and

849 (ii) a list of approved nondedicated projects, prioritized in accordance with Subsection

850 (5); and

851 (c) submit the lists described in Subsection (3)(b) to:

852 (i) the governor;

853 (ii) the Infrastructure and General Government Appropriations Subcommittee;

854 (iii) the Higher Education Appropriations Subcommittee; and

855 ~~[(iv) the State Building Board for the State Building Board's:]~~

856 (iv) the Division of Facilities Construction and Management for a:

857 (A) recommendation, for the list described in Subsection (3)(b)(i); or

858 (B) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

859 (4) A dedicated project:

860 (a) is subject to the ~~[State Building Board's]~~ recommendation of the Division of

861 Facilities Construction and Management as described in Section [63A-5b-403](#); and

862 (b) is not subject to the ~~[State Building Board's]~~ prioritization of the Division of

863 Facilities Construction and Management as described in Section [63A-5b-403](#).

864 (5) (a) Subject to Subsection (6), the board shall prioritize institution requests for

865 funding for nondedicated projects based on:

- 866 (i) capital facility need;
- 867 (ii) utilization of facilities;
- 868 (iii) maintenance and condition of facilities; and
- 869 (iv) any other factor determined by the board.
- 870 (b) On or before August 1, 2019, the board shall establish how the board will prioritize
- 871 institution requests for funding for nondedicated projects, including:
 - 872 (i) how the board will measure each factor described in Subsection (5)(a); and
 - 873 (ii) procedures for prioritizing requests.
- 874 (6) (a) Subject to Subsection (6)(b), and in accordance with Subsection (5), the board
- 875 may annually prioritize:
 - 876 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less
 - 877 than \$50,000,000;
 - 878 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
 - 879 \$50,000,000 but less than \$100,000,000; or
 - 880 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
 - 881 \$100,000,000.
- 882 (b) For each calendar year beginning on or after January 1, 2020, the dollar amounts
- 883 described in Subsection (6)(a) shall be adjusted by an amount equal to the percentage
- 884 difference between:
 - 885 (i) the Consumer Price Index for the 2019 calendar year; and
 - 886 (ii) the Consumer Price Index for the previous calendar year.
- 887 (7) (a) An institution may request operations and maintenance funds for a capital
- 888 development project approved under this section.
- 889 (b) The Legislature shall consider an institution's request described in Subsection
- 890 (7)(a).
- 891 (8) After an institution completes a capital development project described in this
- 892 section, the board shall review the capital development project, including the costs and design

893 of the capital development project.

894 Section 14. Section **53E-3-706** is amended to read:

895 **53E-3-706. Enforcement of part by state superintendent -- Employment of**
896 **personnel -- School districts and charter schools -- Certificate of inspection verification.**

897 (1) The state superintendent shall enforce this part.

898 (2) The state superintendent may employ architects or other qualified personnel, or
899 contract with the [~~State Building Board~~] Division of Facilities Construction and Management,
900 the state fire marshal, or a local governmental entity to:

901 (a) examine the plans and specifications of any school building or alteration submitted
902 under this part;

903 (b) verify the inspection of any school building during or following construction; and

904 (c) perform other functions necessary to ensure compliance with this part.

905 (3) (a) (i) If a local school board uses the school district's building inspector under
906 Subsection [10-9a-305\(6\)\(a\)\(ii\)](#) or [17-27a-305\(6\)\(a\)\(ii\)](#) and issues its own certificate authorizing
907 permanent occupancy of the school building, the local school board shall file a certificate of
908 inspection verification with the local governmental entity's building official and the state board,
909 advising those entities that the school district has complied with the inspection provisions of
910 this part.

911 (ii) If a charter school uses a school district building inspector under Subsection
912 [10-9a-305\(6\)\(a\)\(ii\)](#) or [17-27a-305\(6\)\(a\)\(ii\)](#) and the school district issues to the charter school a
913 certificate authorizing permanent occupancy of the school building, the charter school shall file
914 with the state board a certificate of inspection verification.

915 (iii) If a local school board or charter school uses a local governmental entity's building
916 inspector under Subsection [10-9a-305\(6\)\(a\)\(i\)](#) or [17-27a-305\(6\)\(a\)\(i\)](#) and the local
917 governmental entity issues the local school board or charter school a certificate authorizing
918 permanent occupancy of the school building, the local school board or charter school shall file
919 with the state board a certificate of inspection verification.

920 (iv) (A) If a local school board or charter school uses an independent, certified building
921 inspector under Subsection 10-9a-305(6)(a)(iii) or 17-27a-305(6)(a)(iii), the local school board
922 or charter school shall, upon completion of all required inspections of the school building, file
923 with the state board a certificate of inspection verification and a request for the issuance of a
924 certificate authorizing permanent occupancy of the school building.

925 (B) Upon the local school board's or charter school's filing of the certificate and request
926 as provided in Subsection (3)(a)(iv)(A), the school district or charter school shall be entitled to
927 temporary occupancy of the school building that is the subject of the request for a period of 90
928 days, beginning the date the request is filed, if the school district or charter school has
929 complied with all applicable fire and life safety code requirements.

930 (C) Within 30 days after the local school board or charter school files a request under
931 Subsection (3)(a)(iv)(A) for a certificate authorizing permanent occupancy of the school
932 building, the state superintendent shall:

933 (I) (Aa) issue to the local school board or charter school a certificate authorizing
934 permanent occupancy of the school building; or

935 (Bb) deliver to the local school board or charter school a written notice indicating
936 deficiencies in the school district's or charter school's compliance with the inspection
937 provisions of this part; and

938 (II) mail a copy of the certificate authorizing permanent occupancy or the notice of
939 deficiency to the building official of the local governmental entity in which the school building
940 is located.

941 (D) Upon the local school board or charter school remedying the deficiencies indicated
942 in the notice under Subsection (3)(a)(iv)(C)(I)(Bb) and notifying the state superintendent that
943 the deficiencies have been remedied, the state superintendent shall issue a certificate
944 authorizing permanent occupancy of the school building and mail a copy of the certificate to
945 the building official of the local governmental entity in which the school building is located.

946 (E) (I) The state superintendent may charge the school district or charter school a fee

947 for an inspection that the state superintendent considers necessary to enable the state
948 superintendent to issue a certificate authorizing permanent occupancy of the school building.

949 (II) A fee under Subsection (3)(a)(iv)(E)(I) may not exceed the actual cost of
950 performing the inspection.

951 (b) For purposes of this Subsection (3):

952 (i) "local governmental entity" means either a municipality, for a school building
953 located within a municipality, or a county, for a school building located within an
954 unincorporated area in the county; and

955 (ii) "certificate of inspection verification" means a standard inspection form developed
956 by the state superintendent in consultation with local school boards and charter schools to
957 verify that inspections by qualified inspectors have occurred.

958 Section 15. Section **63A-5b-102** is amended to read:

959 **63A-5b-102. Definitions.**

960 As used in this chapter:

961 [~~(1)~~] "~~Board~~" means the state building board created in Section ~~63A-5b-201~~.]

962 [~~(2)~~] (1) "Capitol hill facilities" means the same as that term is defined in Section
963 ~~63C-9-102~~.

964 [~~(3)~~] (2) "Capitol hill grounds" means the same as that term is defined in Section
965 ~~63C-9-102~~.

966 [~~(4)~~] (3) "Compliance agency" means the same as that term is defined in Section
967 ~~15A-1-202~~.

968 [~~(5)~~] (4) "Director" means the division director, appointed under Section ~~63A-5b-302~~.

969 [~~(6)~~] (5) "Division" means the Division of Facilities Construction and Management
970 created in Section ~~63A-5b-301~~.

971 [~~(7)~~] (6) "Institution of higher education" means an institution listed in Subsection
972 ~~53B-2-101~~(1).

973 [~~(8)~~] (7) "Trust lands administration" means the School and Institutional Trust Lands

974 Administration established in Section 53C-1-201.

975 ~~[(9)]~~ (8) "Utah Board of Higher Education" means the Utah Board of Higher Education
 976 established in Section 53B-1-402.

977 Section 16. Section 63A-5b-303 is amended to read:

978 **63A-5b-303. Duties and authority of division.**

979 (1) (a) The division shall:

980 (i) subject to Subsection (1)(b), supervise and control the allocation of space, in
 981 accordance with legislative directive through annual appropriations acts, other legislation, or
 982 statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except
 983 as provided in Subsection (3) or as otherwise provided by statute;

984 (ii) assure the efficient use of all building space under the division's supervision and
 985 control;

986 (iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by
 987 the state or an agency, as authorized by the Legislature through an appropriation act, other
 988 legislation, or statute, subject to Subsection (1)(c);

989 (iv) except as otherwise provided by statute, hold title to all real property, buildings,
 990 fixtures, and appurtenances owned by the state or an agency;

991 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing
 992 title to or an interest in property belonging to the state or ~~[of]~~ to the state's departments, except
 993 institutions of higher education and the trust lands administration;

994 (vi) (A) periodically conduct a market analysis of proposed rates and fees; and

995 (B) include in a market analysis a comparison of the division's rates and fees with the
 996 rates and fees of other public or private sector providers of comparable services, if rates and
 997 fees for comparable services are reasonably available;

998 (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and
 999 Efficiency, including responsibilities:

1000 (A) to implement the state building energy efficiency program under Section

1001 63A-5b-1002; and

1002 (B) related to the approval of loans from the State Facility Energy Efficiency Fund
1003 under Section 63A-5a-1003;

1004 (viii) convey, lease, or dispose of the real property, water rights, or water shares
1005 associated with the Utah State Developmental Center if directed to do so by the Utah State
1006 Developmental Center board, as provided in Subsection 62A-5-206.6(2); and

1007 (ix) take all other action that the division is required to do under this chapter or other
1008 applicable statute.

1009 (b) In making an allocation of space under Subsection (1)(a)(i), the division shall
1010 conduct one or more studies to determine the actual needs of each agency.

1011 (c) The division may, without legislative approval, acquire title to real property for use
1012 by the state or an agency if the acquisition cost does not exceed [~~\$250,000~~] \$500,000.

1013 (2) The division may:

1014 (a) sue and be sued;

1015 (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or
1016 otherwise, and hold real or personal property necessary for the discharge of the division's
1017 duties; and

1018 (c) take all other action necessary for carrying out the purposes of this chapter.

1019 (3) (a) The division may not supervise or control the allocation of space for [~~an~~
1020 ~~institution of higher education or~~] an entity in the public education system.

1021 (b) The supervision and control of the legislative area is reserved to the Legislature.

1022 [~~(c) The supervision and control of the trial courts area is reserved to the judiciary.~~]

1023 [~~(d)~~] (c) The supervision and control of capitol hill facilities and capitol hill grounds is
1024 reserved to the State Capitol Preservation Board.

1025 (d) (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of
1026 space for an institution of higher education is reserved to the Utah Board of Higher Education.

1027 (ii) The Utah Board of Higher Education shall consult and cooperate with the division

1028 in the establishment and enforcement of standards for the supervision and control of the
1029 allocation of space for an institution of higher education.

1030 (e) (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of
1031 space for the courts of record listed in Subsection 78A-1-101(1) is reserved to the
1032 Administrative Office of the Courts referred to in Subsection 78A-2-108(3).

1033 (ii) The Administrative Office of the Courts shall consult and cooperate with the
1034 division in the establishment and enforcement of standards for the supervision and control of
1035 the allocation of space for the courts of record listed in Subsection 78A-1-101(1).

1036 (4) Before the division charges a rate, fee, or other amount for a service provided by
1037 the division's internal service fund to an executive branch agency, or to a service subscriber
1038 other than an executive branch agency, the division shall:

1039 (a) submit an analysis of the proposed rate, fee, or other amount to the rate committee
1040 created in Section 63A-1-114; and

1041 (b) obtain the approval of the Legislature as required by Section 63J-1-410.

1042 Section 17. Section 63A-5b-402 is amended to read:

1043 **63A-5b-402. Capital development process -- Approval requirements.**

1044 (1) Except as provided in Section 63A-5b-404, the [board] division shall, on behalf of
1045 all agencies, submit capital development project recommendations and priorities to the
1046 Legislature for approval and prioritization.

1047 (2) An agency that requests an appropriation for a capital development project shall
1048 submit to the division for transmission to the [board] Legislature a capital development project
1049 request and a feasibility study relating to the capital development project.

1050 (3) (a) The division shall, [~~in consultation with the board and~~] in accordance with Title
1051 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards and
1052 requirements for a capital development project request and feasibility study.

1053 (b) The rules shall include:

1054 (i) a deadline by which an agency is required to submit a capital development project

1055 request;

1056 (ii) conditions under which an agency may modify the agency's capital development
1057 project request after the agency submits the request, and requirements applicable to a
1058 modification; and

1059 (iii) requirements for the contents of a feasibility study, including:

1060 (A) the need for the capital development project;

1061 (B) the appropriateness of the scope of the capital development project;

1062 (C) any private funding for the capital development project; and

1063 (D) the economic and community impacts of the capital development project.

1064 (4) The division shall verify the completion and accuracy of a feasibility study that an
1065 agency submits under Subsection (2) prior to ~~[transmitting the feasibility study to the board]~~
1066 submitting capital development project recommendations and priorities under Subsection (1).

1067 Section 18. Section **63A-5b-403** is amended to read:

1068 **63A-5b-403. Institutions of higher education -- Capital development projects --**
1069 **Dedicated and nondedicated projects -- Recommendations and prioritization.**

1070 (1) As used in this section:

1071 (a) "Dedicated project" has the same meaning as that term is defined in:

1072 (i) Section [53B-2a-101](#), for a capital development project under Title 53B, Chapter 2a,
1073 Technical Education; or

1074 (ii) Section [53B-22-201](#), for a capital development project under Title 53B, Chapter 22,
1075 Higher Education Capital Projects.

1076 (b) "Nondedicated project" has the same meaning as that term is defined in:

1077 (i) Section [53B-2a-101](#), for a capital development project under Title 53B, Chapter 2a,
1078 Technical Education; or

1079 (ii) Section [53B-22-201](#), for a capital development project under Title 53B, Chapter 22,
1080 Higher Education Capital Projects.

1081 (2) (a) The ~~[board]~~ division shall submit recommendations to the Legislature in

1082 accordance with:

1083 (i) Section 53B-2a-117, for a dedicated project under Title 53B, Chapter 2a, Technical
1084 Education; or

1085 (ii) Section 53B-22-204, for a dedicated project under Title 53B, Chapter 22, Higher
1086 Education Capital Projects.

1087 (b) A dedicated project is not subject to prioritization by the [board] division.

1088 (3) (a) The [board] division shall prioritize nondedicated projects in accordance with:

1089 (i) Section 63A-5b-402; and

1090 (ii) (A) Section 53B-2a-117, for a nondedicated project under Title 53B, Chapter 2a,
1091 Technical Education; or

1092 (B) Section 53B-22-204, for a nondedicated project under Title 53B, Chapter 22,
1093 Higher Education Capital Projects.

1094 (b) In the [board's] division's scoring process for prioritizing nondedicated projects, the
1095 [board] division shall give more weight to a request that is designated as a higher priority by
1096 the Utah Board of Higher Education than a request that is designated as a lower priority by the
1097 Utah Board of Higher Education only for determining the order of prioritization among
1098 requests submitted by the Utah Board of Higher Education.

1099 (4) The [board] division shall require that an institution of higher education that
1100 submits a request for a capital development project address whether and how, as a result of the
1101 project, the institution of higher education will:

1102 (a) offer courses or other resources that will help meet demand for jobs, training, and
1103 employment in the current market and the projected market for the next five years;

1104 (b) respond to individual skilled and technical job demand over the next three, five,
1105 and 10 years;

1106 (c) respond to industry demands for trained workers;

1107 (d) help meet commitments made by the Governor's Office of Economic Opportunity,
1108 including relating to training and incentives;

- 1109 (e) respond to changing needs in the economy; and
- 1110 (f) respond to demands for online or in-class instruction, based on demographics.
- 1111 (5) The division shall:
- 1112 (a) (i) assist institutions of higher education in providing the information required by
- 1113 Subsection ~~[(3)]~~ (4); and
- 1114 (ii) verify the completion and accuracy of the information submitted by an institution
- 1115 of higher education under Subsection ~~[(3)]~~ (4);
- 1116 (b) assist the Utah Board of Higher Education to fulfill the requirements of Section
- 1117 53B-2a-112 in connection with the finding that the ~~[technical college]~~ division is required to
- 1118 make under Subsection 53B-2a-112~~[(5)]~~(4)(b); and
- 1119 (c) assist the Utah Board of Higher Education in submitting a list of dedicated projects
- 1120 to the ~~[board]~~ division for approval and nondedicated projects to the ~~[board]~~ division for
- 1121 recommendation and prioritization pursuant to Section 53B-22-204.
- 1122 Section 19. Section 63A-5b-404 is amended to read:
- 1123 **63A-5b-404. Exceptions to requirement of legislative approval for capital**
- 1124 **development projects.**
- 1125 (1) (a) Except as provided in this section, a capital development project may not be
- 1126 constructed on state property without legislative approval.
- 1127 (b) The ~~[board]~~ division may authorize a capital development project on state property
- 1128 without legislative approval only as provided in this section.
- 1129 (2) (a) Legislative approval is not required for a capital development project that
- 1130 consists of the design or construction of a new facility if:
- 1131 (i) the ~~[board]~~ division determines that the requesting agency has provided adequate
- 1132 assurance that state funds will not be used for the design or construction of the facility;
- 1133 (ii) the agency provides to the ~~[board]~~ division a written document, signed by the head
- 1134 of the agency:
- 1135 (A) stating that funding or a revenue stream is in place, or will be in place before the

1136 project is completed, to ensure that increased state funding will not be required to cover the
1137 cost of operations and maintenance for the resulting facility or for immediate or future capital
1138 improvements; and

1139 (B) detailing the source of the funding that will be used for the cost of operations and
1140 maintenance and for immediate and future capital improvements to the resulting facility; and

1141 (iii) the ~~[board]~~ division determines that the use of the state property:

1142 (A) is appropriate and consistent with the master plan for the property; and

1143 (B) will not create an adverse impact on the state.

1144 (b) For a facility constructed without legislative approval under Subsection (2)(a), an
1145 agency may not request:

1146 (i) increased state funds for operations and maintenance; or

1147 (ii) increased state capital improvement funding.

1148 (3) Legislative approval is not required for:

1149 (a) a facility:

1150 (i) to be built with funds other than state funds and owned by an entity other than a
1151 state entity; and

1152 (ii) that is within a research park area at the University of Utah or Utah State
1153 University;

1154 (b) a facility to be built at This is the Place State Park by the This is the Place
1155 Foundation with funds of the This is the Place Foundation or with donated services or materials
1156 and that may include grant money from the state;

1157 (c) a project that:

1158 (i) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization
1159 Fund; and

1160 (ii) does not provide a new facility for an agency or institution of higher education; or

1161 (d) a project on school and institutional trust lands that:

1162 (i) is funded by the trust lands administration from the Land Grant Management Fund;

1163 and

1164 (ii) does not fund construction of a new facility for an agency or institution of higher
1165 education.

1166 (4) (a) Legislative approval is not required for a capital development project to be built
1167 for the Department of Transportation resulting from:

1168 (i) an exchange of real property under Section 72-5-111; or

1169 (ii) a sale or exchange of real property from a maintenance facility if the proceeds from
1170 the sale of the real property are used for, or the real property is exchanged for:

1171 (A) real property for another maintenance facility; or

1172 (B) another maintenance facility, including improvements for a maintenance facility.

1173 (b) If the Department of Transportation approves a sale or exchange under Subsection

1174 (4)(a) for a capital development project subject to the board's approval, the Department of

1175 Transportation shall notify the president of the Senate, the speaker of the House of

1176 Representatives, and the cochairs of the Infrastructure and General Government Appropriations

1177 Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to

1178 be built or improved.

1179 Section 20. Section 63A-5b-503 is amended to read:

1180 **63A-5b-503. Planning Fund expenditures authorized -- Ceiling on expenditures --**

1181 **Recovery.**

1182 (1) The Planning Fund shall be used to make payments for engineering, architectural,
1183 and other planning expenses necessary to make a meaningful cost estimate of any facility or
1184 improvement with a demonstrable or immediate need.

1185 (2) The director may make expenditures from the Planning Fund in order to provide
1186 planning information to [~~the board,~~] the governor[;] and the Legislature, up to a maximum of
1187 \$350,000 in outstanding Planning Fund commitments.

1188 (3) (a) The director shall authorize all payments made from the Planning Fund.

1189 (b) Payments from the Planning Fund shall be a charge on the project for which they

1190 were drawn.

1191 (c) If the Legislature appropriates money for a building project for which planning
1192 costs have previously been paid from the Planning Fund, the director shall credit that amount to
1193 the Planning Fund.

1194 (4) (a) The director may expend money from the Planning Fund for architectural and
1195 engineering services incident to the planning and preparation of applications for funds on
1196 construction financed by other than state sources, including federal grants.

1197 (b) Upon approval of financing referred to in Subsection (4)(a), the director shall
1198 reimburse to the Planning Fund the money spent for architectural and engineering services.

1199 Section 21. Section **63A-5b-601** is amended to read:

1200 **63A-5b-601. Definitions.**

1201 As used in this part:

1202 (1) (a) "Facility" means any building, structure, or other improvement that is
1203 constructed:

1204 (i) on property [~~owned by~~] that the state[;] or any of the state's departments,
1205 commissions, institutions, or agencies owns; or

1206 (ii) by the state[;] or any of the state's departments, commissions, institutions, or
1207 agencies on property [~~not owned by~~] that the state does not own.

1208 (b) "Facility" does not mean an unoccupied structure that is a component of the state
1209 highway system.

1210 (2) "Local government" means the county, municipality, or local school district that
1211 would have jurisdiction to act as the compliance agency if the division did not have jurisdiction
1212 to act as the compliance agency.

1213 Section 22. Section **63A-5b-603** is amended to read:

1214 **63A-5b-603. Contracting powers of director -- Bids -- Retainage.**

1215 (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director
1216 may enter into a contract for any work or professional service that the division [~~or board~~] may

1217 do or have done.

1218 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1219 the director may make rules establishing circumstances under which bids may be modified
1220 when all bids for a construction project exceed available funds as determined by the director.

1221 (b) In making the rules described in Subsection (2)(a), the director shall provide for the
1222 fair and equitable treatment of bidders.

1223 (c) The judgment of the director as to the responsibility and qualifications of a bidder is
1224 conclusive, except in case of fraud or bad faith.

1225 (3) The division shall make all payments to the contractor for completed work in
1226 accordance with Section 15-6-2 and pay the interest specified in Section 15-6-3 on any
1227 payments that are late.

1228 (4) If the division retains or withholds a payment on a contract with a private contractor
1229 to do work for the division, the division shall retain or withhold and release the payment as
1230 provided in Section 13-8-5.

1231 Section 23. Section **63A-5b-604** is amended to read:

1232 **63A-5b-604. Construction, alteration, and repair of state facilities -- Powers of**
1233 **director -- Exceptions -- Expenditure of appropriations -- Compliance agency role.**

1234 (1) (a) Except as provided in this section and Section 63A-5b-1101, the director shall
1235 exercise direct supervision over the design and construction of all new facilities, and all
1236 alterations, repairs, and improvements to existing facilities, if the total project construction
1237 cost, regardless of the funding source, is greater than \$100,000.

1238 (b) A state entity may exercise direct supervision over the design and construction of
1239 all new facilities, and over all alterations, repairs, and improvements to existing facilities, if:

1240 (i) the total project construction cost, regardless of the funding sources, is \$100,000 or
1241 less; and

1242 (ii) the state entity assures compliance with the division's forms and contracts and the
1243 division's design, construction, alteration, repair, improvement, and code inspection standards.

1244 (2) The director may enter into a capital improvement partnering agreement with an
1245 institution of higher education that permits the institution of higher education to exercise direct
1246 supervision for a capital improvement project with oversight from the division.

1247 (3) (a) Subject to Subsection (3)(b), the director may delegate control over design,
1248 construction, and other aspects of any project to entities of state government on a
1249 project-by-project basis.

1250 (b) With respect to a delegation of control under Subsection (3)(a), the director may:

1251 (i) impose terms and conditions on the delegation that the director considers necessary
1252 or advisable to protect the interests of the state; and

1253 (ii) revoke the delegation and assume control of the design, construction, or other
1254 aspect of a delegated project if the director considers the revocation and assumption of control
1255 to be necessary to protect the interests of the state.

1256 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1257 the ~~[board]~~ director may delegate control over design, construction, and all other aspects of any
1258 project to entities of state government on a categorical basis for projects within a particular
1259 dollar range and a particular project type.

1260 (b) Rules adopted by the ~~[board]~~ director under Subsection (4)(a) may:

1261 (i) impose the terms and conditions on categorical delegation that the ~~[board]~~ director
1262 considers necessary or advisable to protect the interests of the state;

1263 (ii) provide for the revocation of the delegation on a categorical ~~[or project specific]~~
1264 basis and for the division to assume control of the design, construction, or other aspect of a
1265 category of delegated projects or a specific delegated project if the ~~[board]~~ director considers
1266 revocation of the delegation and assumption of control to be necessary to protect the interests
1267 of the state;

1268 (iii) require that a categorical delegation be renewed by the ~~[board]~~ director on an
1269 annual basis; and

1270 (iv) require the division's oversight of delegated projects.

1271 (5) (a) A state entity to which project control is delegated under this section shall:

1272 (i) assume fiduciary control over project finances;

1273 (ii) assume all responsibility for project budgets and expenditures; and

1274 (iii) receive all funds appropriated for the project, including any contingency funds

1275 contained in the appropriated project budget.

1276 (b) Notwithstanding a delegation of project control under this section, a state entity to

1277 which control is delegated is required to comply with the division's codes and guidelines for

1278 design and construction.

1279 (c) A state entity to which project control is delegated under this section may not

1280 access, for the delegated project, the division's statewide contingency reserve and project

1281 reserve authorized in Section [63A-5b-609](#).

1282 (d) For a facility that will be owned, operated, maintained, and repaired by an entity

1283 that is not an agency and that is located on ~~[state]~~ property that the state owns or leases as a

1284 tenant, the director may authorize the facility's owner to administer the design and construction

1285 of the project relating to that facility.

1286 (6) (a) A project for the construction of a new facility and a project for alterations,

1287 repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:

1288 (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;

1289 (ii) is within a designated research park at the University of Utah or Utah State

1290 University;

1291 (iii) occurs within the boundaries of This is the Place State Park and is administered by

1292 This is the Place Foundation; or

1293 (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah

1294 Percent-for-Art Act.

1295 (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may

1296 request the director to administer the design and construction of a project within the boundaries

1297 of This is the Place State Park.

1298 (7) (a) The role of compliance agency under Title 15A, State Construction and Fire
1299 Codes Act, shall be filled by:

1300 (i) the director, for a project administered by the division;

1301 (ii) the entity designated by the State Capitol Preservation Board, for a project under
1302 Subsection (6)(a)(i);

1303 (iii) the local government, for a project that is:

1304 (A) not subject to the division's administration under Subsection (6)(a)(ii); or

1305 (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);

1306 (iv) the compliance agency designated by the director, for a project under Subsection
1307 (2), (3), (4), or (5)(d); and

1308 (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as the
1309 compliance officer for the balance of the project for which the art is being installed.

1310 (b) A local government acting as the compliance agency under Subsection (7)(a)(iii)
1311 may:

1312 (i) only review plans and inspect construction to enforce the state construction code or
1313 an approved code under Title 15A, State Construction and Fire Codes Act; and

1314 (ii) charge a building permit fee of no more than the amount the local government
1315 could have charged if the land upon which the improvements are located were not owned by
1316 the state.

1317 (8) (a) The zoning authority of a local government under [~~Section 10-9a-305~~ or
1318 ~~17-27a-305~~] Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or
1319 Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply
1320 to the use of [state] property that the state owns or any improvements constructed on [state]
1321 property that the state owns, including improvements constructed by an entity other than a state
1322 entity.

1323 (b) A state entity controlling the use of [state] property that the state owns shall
1324 consider any input received from a local government in determining how the property is to be

1325 used.

1326 Section 24. Section **63A-5b-802** is amended to read:

1327 **63A-5b-802. Leasing responsibilities of the director.**

1328 (1) The director shall:

1329 (a) prepare and submit a yearly request to the governor and Legislature for a designated
1330 amount of square footage by type of space to be leased by the division for that fiscal year;

1331 (b) lease, in the name of the division, all real property space to be occupied by a leasing
1332 agency;

1333 (c) in leasing space:

1334 (i) use a process consistent with the best interest of the state, the requirements of the
1335 leasing agency, and the anticipated use of the property; and

1336 (ii) comply with any legislative mandates contained in the appropriations act or other
1337 legislation;

1338 (d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each
1339 high-cost lease at least 12 months before the lease expires;

1340 (e) evaluate each lease under the division's control and apply the criteria contained in
1341 Subsection (1)(f), as applicable, to evaluate the lease;

1342 (f) in evaluating leases:

1343 (i) determine whether the lease is cost-effective when the needs of the leasing agency
1344 to be housed in the leased facilities are considered;

1345 (ii) determine whether another option such as construction, use of other state-owned
1346 space, or a lease-purchase agreement is more cost-effective than leasing;

1347 (iii) determine whether the significant lease terms are cost-effective and provide the
1348 state with sufficient flexibility and protection from liability;

1349 (iv) compare the proposed lease payments to the current market rates, and evaluate
1350 whether the proposed lease payments are reasonable under current market conditions;

1351 (v) compare proposed significant lease terms to the current market, and recommend

1352 whether these proposed terms are reasonable under current market conditions; and
1353 (vi) if applicable, recommend that the lease or modification to a lease be approved or
1354 disapproved;

1355 (g) based upon the evaluation, include in the report recommendations that identify
1356 viable alternatives to:

1357 (i) make the lease cost-effective; or

1358 (ii) meet the leasing agency's needs when the lease expires; and

1359 (h) upon request, provide the information included in the report to:

1360 (i) the leasing agency benefitted by the lease; and

1361 (ii) the Office of the Legislative Fiscal Analyst.

1362 (2) The director may:

1363 (a) subject to legislative appropriation, enter into a facility lease with a term of up to 10
1364 years if the length of the lease's term is economically advantageous to the state; and

1365 (b) [~~with the approval of the board and~~] subject to legislative appropriation, enter into a
1366 facility lease with a term of more than 10 years if the length of the lease's term is economically
1367 advantageous to the state.

1368 Section 25. Section **63A-5b-803** is amended to read:

1369 **63A-5b-803. Reporting of leasing activity.**

1370 (1) The director shall:

1371 (a) prepare a standard form upon which a leasing agency and another state institution
1372 or entity can report the current and proposed lease activity of the leasing agency, institution, or
1373 entity, including any lease renewal; and

1374 (b) develop procedures and mechanisms within the division to:

1375 (i) obtain and share information about each leasing agency's real property needs; and

1376 (ii) provide oversight and review of lessors and lessees during the term of each lease.

1377 (2) Each leasing agency, the [~~Judicial Council~~] Administrative Office of the Courts,
1378 and the board of trustees for each institution of higher education, shall report all current and

1379 proposed lease activity on the standard form prepared by the division to:

1380 (a) the division; and

1381 (b) the Office of the Legislative Fiscal Analyst.

1382 Section 26. Section **63A-5b-806** is amended to read:

1383 **63A-5b-806. Division rules on the value of property bought or exchanged --**
1384 **Exception.**

1385 (1) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative
1386 Rulemaking Act, make rules to ensure that, if the division buys or exchanges real property, the
1387 value of the real property is congruent with the proposed price and other terms of the purchase
1388 or exchange.

1389 (2) The rules:

1390 (a) shall establish procedures for determining the value of the real property;

1391 (b) may provide that an appraisal, as defined in Section [61-2g-102](#), demonstrates the
1392 real property's value; and

1393 (c) may require that the appraisal be completed by a state-certified general appraiser, as
1394 defined in Section [61-2g-102](#).

1395 (3) The rules adopted under Subsection (1) do not apply to the purchase or exchange of
1396 real property, or an interest in real property, with a value of less than ~~[\$250,000]~~ \$500,000, as
1397 estimated by the division.

1398 Section 27. Section **63A-5b-901** is amended to read:

1399 **63A-5b-901. Definitions.**

1400 As used in this part:

1401 (1) "Applicant" means a person who submits a timely, qualified proposal to the
1402 division.

1403 (2) "Condemnee" means the same as that term is defined in Section [78B-6-520.3](#).

1404 ~~[(3) "Convey" means:]~~

1405 ~~[(a) to provide for a primary state agency's occupancy or use of vacant division-owned~~

1406 property; or]

1407 ~~[(b) to effect a transfer of ownership or lease of vacant division-owned property to a~~
1408 ~~secondary state agency, local government entity, public purpose nonprofit entity, or private~~
1409 ~~party.]~~

1410 ~~[(4)]~~ (3) "Division-owned property" means real property, including an interest in real
1411 property, to which the division holds title, regardless of who occupies or uses the real property.

1412 ~~[(5)]~~ (4) "Local government entity" means a county, city, town, metro township, local
1413 district, special service district, community development and renewal agency, conservation
1414 district, school district, or other political subdivision of the state.

1415 ~~[(6)]~~ (5) "Primary state agency" means a state agency for which the division holds title
1416 to real property that the state agency occupies or uses, as provided in Subsection
1417 [63A-5b-303\(1\)\(a\)\(iv\)](#).

1418 ~~[(7)]~~ (6) "Private party" means a person who is not a state agency, local government
1419 entity, or public purpose nonprofit entity.

1420 ~~[(8)]~~ (7) "Public purpose nonprofit entity" means a corporation, association,
1421 organization, or entity that:

1422 (a) is located within the state;

1423 (b) is not a state agency or local government entity;

1424 (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue
1425 Code; and

1426 (d) operates to fulfill a public purpose.

1427 ~~[(9)]~~ (8) "Qualified proposal" means a written proposal that:

1428 (a) meets the criteria established by the division by rule under Section [63A-5b-903](#);

1429 (b) if submitted by a local government entity or public purpose nonprofit entity,
1430 explains the public purpose for which the local government entity or public purpose nonprofit
1431 entity seeks a transfer of ownership or lease of the vacant division-owned property; and

1432 (c) the director determines will, if accepted and implemented, provide a material

1433 benefit to the state.

1434 ~~[(10)]~~ (9) "Secondary state agency" means a state agency:

1435 (a) that is authorized to hold title to real property that the state agency occupies or uses,
1436 as provided in ~~[Subsection 63A-5b-303(4)]~~ Section 63A-5b-304; and

1437 (b) for which the division does not hold title to real property that the state agency
1438 occupies or uses.

1439 ~~[(11)]~~ (10) "State agency" means a department, division, office, entity, agency, or other
1440 unit of state government.

1441 ~~[(12)]~~ (11) "Transfer of ownership" includes a transfer of the ownership of vacant
1442 division-owned property that occurs as part of an exchange of the vacant division-owned
1443 property for another property.

1444 ~~[(13)]~~ (12) "Vacant division-owned property" means division-owned property that:

1445 (a) a primary state agency ~~[has discontinued to occupy or use]~~ is not occupying or
1446 using; and

1447 (b) the director has determined should be made available for:

1448 (i) use or occupancy by a primary state agency; or

1449 (ii) a transfer of ownership or lease to a secondary state agency, local government
1450 entity, public purpose nonprofit entity, or private party.

1451 ~~[(14)]~~ (13) "Written proposal" means a brief statement in writing that explains:

1452 (a) the proposed use or occupancy, transfer of ownership, or lease of vacant
1453 division-owned property; and

1454 (b) how the state will benefit from the proposed use or occupancy, transfer of
1455 ownership, or lease.

1456 Section 28. Section **63A-5b-902** is amended to read:

1457 **63A-5b-902. Application of part.**

1458 (1) The provisions of this part, other than this section, do not apply to:

1459 (a) a conveyance, lease, or disposal under Subsection 63A-5b-303(1)(a)~~[(ix)]~~(viii); ~~[or]~~

1460 (b) the division's disposal or lease of division-owned property with a value under
 1461 [~~\$250,000~~] \$500,000, as estimated by the division[-]; or

1462 (c) a conveyance, lease, or disposal of division-owned property in connection with:

1463 (i) the establishment of a state store, as defined in Section [32B-1-102](#); or

1464 (ii) the construction of student housing.

1465 (2) Nothing in Subsection (1)(b) or (c) may be construed to diminish or eliminate the
 1466 division's responsibility to manage division-owned property in the best interests of the state.

1467 Section 29. Section **63A-5b-904** is amended to read:

1468 **63A-5b-904. Division authority with respect to vacant division-owned property --**

1469 **Limitations.**

1470 (1) Subject to Section [63A-5b-909](#), the division may~~[-as provided in this part]:~~

1471 (a) provide for a primary state agency's occupancy or use of vacant division-owned
 1472 property, if the director determines that the primary state agency's occupancy or use is in the
 1473 best interests of the state;

1474 (b) effect a transfer of ownership or lease of vacant division-owned property ~~[to a~~
 1475 ~~secondary state agency, local government entity, public purpose nonprofit entity, or private~~
 1476 ~~party], as provided in this section; or~~

1477 (c) refer vacant division-owned property to the Department of Transportation for sale
 1478 by auction, as provided in Section [63A-5b-908](#).

1479 (2) (a) The division may effect a transfer of ownership or lease of vacant
 1480 division-owned property to an applicant for fair market value if the director determines that the
 1481 transfer of ownership or lease to that applicant is in the state's best interest.

1482 (b) In determining the state's best interest under Subsection (2)(a), the director may
 1483 consider:

1484 (i) the price and financial terms of all qualified proposals; and

1485 (ii) the relative benefits to the state of the proposed uses of the vacant division-owned
 1486 property as stated in the qualified proposals.

1487 ~~[(2)]~~ (3) The division may ~~[not]~~ effect a transfer of ownership or lease of vacant
1488 division-owned property without receiving fair market value in return ~~[unless]~~ if:

1489 (a) the director determines that the transfer of ownership or lease is in the best interests
1490 of the state;

1491 (b) for a proposed transfer of ownership or lease to a local government entity, public
1492 purpose nonprofit entity, or private party, the director determines that the local government
1493 entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a
1494 public purpose;

1495 (c) the director requests and receives a recommendation on the proposed transfer of
1496 ownership or lease from the Legislative Executive Appropriations Committee;

1497 (d) the director communicates the Executive Appropriations Committee's
1498 recommendation to the executive director; and

1499 (e) the executive director approves the transfer of ownership or lease.

1500 ~~[(3)]~~ (4) (a) If the division effects a transfer of ownership of vacant division-owned
1501 property without receiving fair market value in return, ~~[as provided in this part,]~~ the division
1502 shall require the documents memorializing the transfer of ownership to preserve to the
1503 division:

1504 (i) in the case of a transfer of ownership of vacant division-owned property to a
1505 secondary state agency, local government entity, or public purpose nonprofit entity for no or
1506 nominal consideration, a right of reversion, providing for the ownership of the property to
1507 revert to the division if the property ceases to be used for the public benefit; or

1508 (ii) in the case of any other transfer of ownership of vacant division-owned property, a
1509 right of first refusal allowing the division to purchase the property from the transferee for the
1510 same price that the transferee paid to the division if the transferee wishes to transfer ownership
1511 of the former vacant division-owned property.

1512 (b) Subsection ~~[(3)]~~ (4)(a) does not apply to the sale of vacant division-owned property
1513 at an auction under Section [63A-5b-908](#).

1514 Section 30. Section **63A-5b-905** is amended to read:

1515 **63A-5b-905. Notice required before division may effect a transfer of ownership**
1516 **or lease of division-owned property.**

1517 (1) Before the division may [~~convey~~] effect a transfer of ownership or lease of vacant
1518 division-owned property, the division shall give notice as provided in Subsection (2).

1519 (2) A notice required under Subsection (1) shall:

1520 (a) identify and describe the vacant division-owned property;

1521 (b) indicate the availability of the vacant division-owned property;

1522 (c) invite persons interested in the vacant division-owned property to submit a written
1523 proposal to the division;

1524 (d) indicate the deadline for submitting a written proposal;

1525 (e) be posted on the division's website for at least 60 consecutive days before the
1526 deadline for submitting a written proposal, in a location specifically designated for notices
1527 dealing with vacant division-owned property;

1528 (f) be posted on the Utah Public Notice Website created in Section **63A-16-601** for at
1529 least 60 consecutive days before the deadline for submitting a written proposal; and

1530 (g) be sent by email to each person who has previously submitted to the division a
1531 written request to receive notices under this section.

1532 Section 31. Section **63A-5b-907** is amended to read:

1533 **63A-5b-907. Priorities for vacant division-owned property -- Division to convey**
1534 **vacant division-owned property.**

1535 (1) This section applies to a proposed transfer of ownership or lease of vacant
1536 division-owned property at less than fair market value.

1537 [~~(1)~~] (2) (a) [~~A~~] An applicant that is a state agency has priority for vacant
1538 division-owned property over an applicant that is a local government entity, a public purpose
1539 nonprofit entity, and a private party.

1540 (b) [~~A~~] An applicant that is a local government entity and an applicant that is a public

1541 purpose nonprofit entity have:

1542 (i) priority for vacant division-owned property over an applicant that is a private party;

1543 and

1544 (ii) between them the same priority for vacant division-owned property.

1545 ~~[(2)]~~ (3) If the division receives multiple timely qualified proposals from applicants
1546 with the highest and same priority, the division shall:

1547 (a) notify the ~~[board]~~ executive director of:

1548 (i) the availability of the vacant division-owned property; and

1549 (ii) the applicants with the highest and same priority that have submitted qualified
1550 proposals; and

1551 (b) provide the ~~[board]~~ executive director with a copy of the timely qualified proposals
1552 submitted by the applicants with the highest and same priority.

1553 ~~[(3)]~~ (4) Within 30 days after being notified under Subsection ~~[(2)]~~ (3), the ~~[board]~~
1554 executive director shall:

1555 (a) determine which applicant's qualified proposal is most likely to result in the highest
1556 and best public benefit; and

1557 (b) notify the division of the ~~[board's]~~ executive director's decision under Subsection
1558 ~~[(3)]~~ (4)(a).

1559 ~~[(4)]~~ (5) The division shall ~~[convey]~~ effect a transfer of ownership or lease of the
1560 vacant division-owned property to:

1561 (a) the applicant with the highest priority under Subsection ~~[(1)]~~ (2), if the division
1562 receives a timely qualified proposal from a single applicant with the highest priority; or

1563 (b) the applicant whose qualified proposal was determined by the ~~[board]~~ executive
1564 director under Subsection ~~[(3)]~~ (4) to be most likely to result in the highest and best public
1565 benefit, if the division receives multiple timely qualified proposals from applicants with the
1566 highest and same priority.

1567 ~~[(5) (a) If the division leases vacant division-owned property to a private party, the~~

1568 ~~division shall, within 30 days after a lease agreement is executed, provide written notice of the~~
1569 ~~lease to:]~~

1570 ~~[(i) the municipality in which the vacant division-owned property is located, if the~~
1571 ~~vacant division-owned property is within a municipality; or]~~

1572 ~~[(ii) the county in whose unincorporated area the vacant division-owned property is~~
1573 ~~located, if the vacant division-owned property is not located within a municipality.]~~

1574 ~~[(b) Nothing in this chapter may be used by a private party leasing division-owned~~
1575 ~~property as a basis for not complying with applicable local land use ordinances and~~
1576 ~~regulations.]~~

1577 Section 32. Section **63A-5b-907.5** is enacted to read:

1578 **63A-5b-907.5. Lease of division-owned property to a private party.**

1579 (1) If the division leases division-owned property to a private party, the division shall,
1580 within 30 days after a lease agreement is executed, provide written notice of the lease to:

1581 (a) the municipality in which the division-owned property is located, if the
1582 division-owned property is within a municipality; or

1583 (b) the county in whose unincorporated area the division-owned property is located, if
1584 the division-owned property is not located within a municipality.

1585 (2) Nothing in this part may be used by a private party leasing division-owned property
1586 as a basis for not complying with applicable local land use ordinances and regulations.

1587 Section 33. Section **63A-5b-910** is amended to read:

1588 **63A-5b-910. Disposition of proceeds received by division from sale of vacant**
1589 **division-owned property.**

1590 (1) (a) Except as provided in Section **62A-5-206.7**, the division shall pay into the state
1591 treasury the money received from the transfer of ownership or lease of vacant division-owned
1592 property.

1593 (b) Money paid into the state treasury under Subsection (1)(a):

1594 (i) becomes a part of the funds provided by law for carrying out the building program

1595 of the state; and

1596 (ii) is appropriated for the purpose described in Subsection (1)(b)(i).

1597 (2) The proceeds from the transfer of ownership or lease of vacant division-owned
1598 property belonging to or used by a particular state agency shall, to the extent practicable, be
1599 expended for the construction of buildings or in the performance of other work for the benefit
1600 of that state agency.

1601 Section 34. Section **63A-5b-1001** is amended to read:

1602 **63A-5b-1001. Definitions.**

1603 As used in this part:

1604 (1) "Energy efficiency measure" means an action taken or initiated by an agency that:

1605 (a) reduces the agency's energy or fuel use or resource energy consumption, water or
1606 other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or
1607 other resource; or

1608 (b) increases the agency's energy or fuel efficiency or resource consumption efficiency.

1609 (2) "Energy efficiency program" means a program established under Section
1610 **63A-5b-1002** for the purpose of improving energy efficiency measures and reducing the energy
1611 costs for state facilities.

1612 (3) "Fund" means the State Facility Energy Efficiency Fund created in Section
1613 **63A-5b-1003**.

1614 (4) "Performance efficiency agreement" means an agreement entered into by an agency
1615 whereby the agency implements one or more energy efficiency measures and finances the costs
1616 associated with implementation of performance efficiency measures using the stream of
1617 expected savings in costs resulting from implementation of the performance efficiency
1618 measures as a funding source for repayment.

1619 (5) (a) "State facility" means any building, structure, or other improvement that is
1620 constructed on property [~~owned by~~] that the state, any of the state's departments, commissions,
1621 institutions, or agencies, or a state institution of higher education owns or leases as a tenant.

- 1622 (b) "State facility" does not include:
- 1623 (i) an unoccupied structure that is a component of the state highway system;
- 1624 (ii) a privately owned structure that is located on property ~~[owned by]~~ that the state,
- 1625 any of the state's departments, commissions, institutions, or agencies, or a state institution of
- 1626 higher education owns or leases as a tenant; or
- 1627 (iii) a structure that is located on land administered by the trust lands administration
- 1628 under a lease, permit, or contract with the trust lands administration.

1629 Section 35. Section **63A-5b-1003** is amended to read:

1630 **63A-5b-1003. State Facility Energy Efficiency Fund -- Contents -- Use of fund**
1631 **money.**

- 1632 (1) There is created a revolving loan fund known as the "State Facility Energy
- 1633 Efficiency Fund."
- 1634 (2) The fund shall consist of:
- 1635 (a) money transferred from the Stripper Well-Petroleum Violation Escrow Fund;
- 1636 (b) money appropriated by the Legislature;
- 1637 (c) money received for the repayment of loans made from the fund; and
- 1638 (d) interest earned on the fund.
- 1639 (3) The ~~[board]~~ division shall make a loan from the fund to an agency to finance all or
- 1640 part of energy efficiency measures.
- 1641 (4) (a) (i) An agency requesting a loan shall submit an application to the ~~[board]~~
- 1642 division in the form and containing the information that the ~~[board]~~ division requires, including
- 1643 plans and specifications for the proposed energy efficiency measures.
- 1644 (ii) An agency may request a loan to fund all or part of the cost of energy efficiency
- 1645 measures.
- 1646 (b) If the ~~[board]~~ division rejects the application, the ~~[board]~~ division shall notify the
- 1647 applicant stating the reasons for the rejection.
- 1648 (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

1649 the ~~[board]~~ division shall make rules establishing:

1650 (i) criteria to determine:

1651 (A) loan eligibility;

1652 (B) energy efficiency measures priority; and

1653 (C) ways to measure energy savings that take into account fluctuations in energy costs
1654 and temperature; and

1655 (ii) a method of monitoring actual savings resulting from energy efficiency measures
1656 implemented using loan money from the fund, using objective and verifiable post-construction
1657 measures, if available.

1658 (b) In making rules that establish prioritization criteria for energy efficiency measures,
1659 the ~~[board]~~ division may consider:

1660 (i) possible additional sources of revenue;

1661 (ii) the feasibility and practicality of the energy efficiency measures;

1662 (iii) the energy savings attributable to eligible energy efficiency measures;

1663 (iv) the annual energy savings;

1664 (v) the projected energy cost payback of eligible energy efficiency measures;

1665 (vi) other benefits to the state attributable to eligible energy efficiency measures;

1666 (vii) the availability of federal funds for the energy efficiency measures; and

1667 (viii) whether to require an agency to provide matching funds for the energy efficiency
1668 measures.

1669 (6) (a) In reviewing energy efficiency measures for possible funding, the ~~[board]~~
1670 division shall:

1671 (i) review the loan application and the plans and specifications for the energy
1672 efficiency measures;

1673 (ii) determine whether to grant the loan by applying the loan eligibility criteria; and

1674 (iii) if the loan is granted, prioritize funding of the energy efficiency measures by
1675 applying the prioritization criteria.

1676 (b) The ~~[board]~~ division may condition approval of a loan application and the
1677 availability of funds on assurances from the agency that the ~~[board]~~ division considers
1678 necessary to ensure that the agency:

1679 (i) uses the proceeds to pay the cost of the energy efficiency measures; and

1680 (ii) implements the energy efficiency measures.

1681 (7) The division shall annually report to the Government Operations Interim
1682 Committee of the Legislature the actual savings resulting from energy efficiency measures
1683 implemented using loan money from the fund, as monitored pursuant to rules adopted under
1684 Subsection (5)(a)(ii).

1685 ~~[(8) The manager of the energy efficiency program shall provide staff support when the~~
1686 ~~board performs the duties established in this section.]~~

1687 Section 36. Section **63A-5b-1104** is amended to read:

1688 **63A-5b-1104. Notification to local governments for construction or modification**
1689 **of certain facilities.**

1690 (1) (a) The director or the director's designee shall notify in writing the elected
1691 representatives of a local government entity directly and substantively affected by any
1692 diagnostic, treatment, parole, probation, or other secured facility project exceeding [~~\$250,000~~]
1693 \$500,000, if:

1694 (i) the nature of the project has been significantly altered since an earlier notification;

1695 (ii) the project would significantly change the nature of the functions presently
1696 conducted at the location; or

1697 (iii) the project is new construction.

1698 (b) At the request of the state entity or the local government entity, representatives
1699 from the state entity and the affected local entity shall conduct or participate in a local public
1700 hearing or hearings to discuss the issues described in Subsection (1)(a).

1701 (2) (a) (i) Before beginning the construction of student housing on property owned by
1702 the state or an institution of higher education, the director shall provide written notice of the

1703 proposed construction, as provided in Subsection (2)(a)(ii), if any of the proposed student
1704 housing buildings is within 300 feet of privately owned residential property.

1705 (ii) Each notice under Subsection (2)(a)(i) shall be provided to the legislative body and,
1706 if applicable, the mayor of:

1707 (A) the county in whose unincorporated area the privately owned residential property is
1708 located; or

1709 (B) the municipality in whose boundary the privately owned residential property is
1710 located.

1711 (b) (i) Within 21 days after receiving the notice required by Subsection (2)(a)(i), a
1712 county or municipality entitled to the notice may submit a written request to the director for a
1713 public hearing on the proposed student housing construction.

1714 (ii) If a county or municipality requests a hearing under Subsection (2)(b)(i), the
1715 director and the county or municipality shall jointly hold a public hearing to provide
1716 information to the public and to allow the director and the county or municipality to receive
1717 input from the public about the proposed student housing construction.

1718 Section 37. Section **63B-1-101** is amended to read:

1719 **63B-1-101. Definitions.**

1720 As used in this title:

1721 [~~(1) "Board" means the State Building Board.~~]

1722 [~~(2)~~] (1) "Bond anticipation note" means:

1723 (a) any financing note issued according to the procedures and requirements of this title
1724 in anticipation of the receipt of the proceeds of the sale of the bonds authorized under this title;
1725 and

1726 (b) any renewal of those notes.

1727 [~~(3)~~] (2) "Bonds" means any bonds, bond anticipation notes, or other obligations
1728 authorized under this title for which the full faith, credit, and resources and ad valorem taxing
1729 power of the state have been pledged for the payment of the principal of and interest on the

1730 bonds.

1731 [(4)] (3) "Capital project" means any land, building, facility, highway, improvement,
 1732 equipment, or other property, or combination of them, that the state of Utah or any of its
 1733 agencies, divisions, institutions, or other administrative subunits are authorized by law to
 1734 acquire or construct.

1735 [(5)] (4) "Commission" means the State Bonding Commission created in Section
 1736 63B-1-201.

1737 [(6)] (5) "Division" means the Division of Facilities Construction and Management.

1738 [(7)] (6) "Sinking fund" means the fund or account established as provided in this title
 1739 to hold money to pay the principal and interest on each series of bonds as they become due.

1740 Section 38. Section 63B-1-304 is amended to read:

1741 **63B-1-304. State Building Ownership Authority created -- Members --**
 1742 **Compensation -- Location in Department of Administrative Services.**

1743 (1) There is created a body politic and corporate to be known as the State Building
 1744 Ownership Authority composed of:

1745 (a) the governor;

1746 (b) the state treasurer; and

1747 (c) the ~~[chair of the state building board created under Section 63A-5b-201]~~ executive
 1748 director of the Department of Government Operations.

1749 (2) A member may not receive compensation or benefits for the member's service, but
 1750 may receive per diem and travel expenses in accordance with:

1751 (a) Section 63A-3-106;

1752 (b) Section 63A-3-107; and

1753 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 1754 63A-3-107.

1755 (3) (a) Upon request, the division shall provide staff support to the State Building
 1756 Ownership Authority.

1757 (b) The State Building Ownership Authority may seek and obtain independent financial
1758 advice, support, and information from the state financial advisor created under Section
1759 67-4-16.

1760 Section 39. Section 63C-9-403 is amended to read:

1761 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

1762 (1) As used in this section:

1763 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
1764 related to a single project.

1765 (b) "Change order" means the same as that term is defined in Section 63G-6a-103.

1766 (c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or
1767 "operative" who:

1768 (i) works at least 30 hours per calendar week; and

1769 (ii) meets employer eligibility waiting requirements for health care insurance, which
1770 may not exceed the first of the calendar month following 60 days after the day on which the
1771 individual is hired.

1772 (d) "Health benefit plan" means:

1773 (i) the same as that term is defined in Section 31A-1-301; or

1774 (ii) an employee welfare benefit plan:

1775 (A) established under the Employee Retirement Income Security Act of 1974, 29
1776 U.S.C. Sec. 1001 et seq.;

1777 (B) for an employer with 100 or more employees; and

1778 (C) in which the employer establishes a self-funded or partially self-funded group
1779 health plan to provide medical care for the employer's employees and dependents of the
1780 employees.

1781 (e) "Qualified health coverage" means the same as that term is defined in Section
1782 26-40-115.

1783 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

1784 (g) "Third party administrator" or "administrator" means the same as that term is
1785 defined in Section 31A-1-301.

1786 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1787 (a) a contractor of a design or construction contract entered into by the board, or on
1788 behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount
1789 equal to or greater than \$2,000,000; and

1790 (b) a subcontractor of a contractor of a design or construction contract entered into by
1791 the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an
1792 aggregate amount equal to or greater than \$1,000,000.

1793 (3) The requirements of this section do not apply to a contractor or subcontractor
1794 described in Subsection (2) if:

1795 (a) the application of this section jeopardizes the receipt of federal funds;

1796 (b) the contract is a sole source contract; or

1797 (c) the contract is an emergency procurement.

1798 (4) A person that intentionally uses change orders, contract modifications, or multiple
1799 contracts to circumvent the requirements of this section is guilty of an infraction.

1800 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
1801 executive director that the contractor has and will maintain an offer of qualified health
1802 coverage for the contractor's employees and the employees' dependents during the duration of
1803 the contract by submitting to the executive director a written statement that:

1804 (i) the contractor offers qualified health coverage that complies with Section
1805 26-40-115;

1806 (ii) is from:

1807 (A) an actuary selected by the contractor or the contractor's insurer;

1808 (B) an underwriter who is responsible for developing the employer group's premium
1809 rates; or

1810 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),

1811 an actuary or underwriter selected by a third party administrator; and
1812 (iii) was created within one year before the day on which the statement is submitted.
1813 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
1814 shall provide the actuary or underwriter selected by the administrator, as described in
1815 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
1816 contribution to the health benefit plan and the health benefit plan's actuarial value meets the
1817 requirements of qualified health coverage.
1818 (ii) A contractor may not make a change to the contractor's contribution to the health
1819 benefit plan, unless the contractor provides notice to:
1820 (A) the actuary or underwriter selected by the administrator, as described in Subsection
1821 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
1822 Subsection (5)(a) in compliance with this section; and
1823 (B) the executive director.
1824 (c) A contractor that is subject to the requirements of this section shall:
1825 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
1826 is subject to the requirements of this section shall obtain and maintain an offer of qualified
1827 health coverage for the subcontractor's employees and the employees' dependents during the
1828 duration of the subcontract; and
1829 (ii) obtain from a subcontractor that is subject to the requirements of this section a
1830 written statement that:
1831 (A) the subcontractor offers qualified health coverage that complies with Section
1832 [26-40-115](#);
1833 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
1834 underwriter who is responsible for developing the employer group's premium rates, or if the
1835 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
1836 underwriter selected by an administrator; and
1837 (C) was created within one year before the day on which the contractor obtains the

1838 statement.

1839 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as
1840 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
1841 accordance with administrative rules adopted by the division under Subsection (6).

1842 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
1843 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1844 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
1845 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
1846 penalties in accordance with administrative rules adopted by the department under Subsection
1847 (6).

1848 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
1849 an offer of qualified health coverage described in Subsection (5)(a).

1850 (6) The department shall adopt administrative rules:

1851 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1852 (b) in coordination with:

1853 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

1854 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

1855 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
1856 accordance with Section 63A-5b-607;

1857 (iv) a public transit district in accordance with Section 17B-2a-818.5;

1858 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

1859 (vi) the Legislature's Administrative Rules Review Committee; and

1860 (c) that establish:

1861 (i) the requirements and procedures a contractor and a subcontractor shall follow to
1862 demonstrate compliance with this section, including:

1863 (A) that a contractor or subcontractor's compliance with this section is subject to an
1864 audit by the department or the Office of the Legislative Auditor General;

1865 (B) that a contractor that is subject to the requirements of this section shall obtain a
1866 written statement described in Subsection (5)(a); and

1867 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
1868 written statement described in Subsection (5)(c)(ii);

1869 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1870 violates the provisions of this section, which may include:

1871 (A) a three-month suspension of the contractor or subcontractor from entering into
1872 future contracts with the state upon the first violation;

1873 (B) a six-month suspension of the contractor or subcontractor from entering into future
1874 contracts with the state upon the second violation;

1875 (C) an action for debarment of the contractor or subcontractor in accordance with
1876 Section [63G-6a-904](#) upon the third or subsequent violation; and

1877 (D) monetary penalties which may not exceed 50% of the amount necessary to
1878 purchase qualified health coverage for employees and dependents of employees of the
1879 contractor or subcontractor who were not offered qualified health coverage during the duration
1880 of the contract; and

1881 (iii) a website on which the department shall post the commercially equivalent
1882 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
1883 the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

1884 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
1885 or subcontractor who intentionally violates the provisions of this section is liable to the
1886 employee for health care costs that would have been covered by qualified health coverage.

1887 (ii) An employer has an affirmative defense to a cause of action under Subsection
1888 (7)(a)(i) if:

1889 (A) the employer relied in good faith on a written statement described in Subsection
1890 (5)(a) or (5)(c)(ii); or

1891 (B) the department determines that compliance with this section is not required under

1892 the provisions of Subsection (3).

1893 (b) An employee has a private right of action only against the employee's employer to
1894 enforce the provisions of this Subsection (7).

1895 (8) Any penalties imposed and collected under this section shall be deposited into the
1896 Medicaid Restricted Account created in Section [26-18-402](#).

1897 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
1898 required by this section:

1899 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1900 or contractor under:

1901 (i) Section [63G-6a-1602](#); or

1902 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1903 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1904 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1905 or construction.

1906 (10) An administrator, including the administrator's actuary or underwriter, who
1907 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
1908 coverage of a contractor or subcontractor who provides a health benefit plan described in
1909 Subsection (1)(d)(ii):

1910 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
1911 unless the administrator commits gross negligence in preparing the written statement;

1912 (b) is not liable for any error in the written statement if the administrator relied in good
1913 faith on information from the contractor or subcontractor; and

1914 (c) may require as a condition of providing the written statement that a contractor or
1915 subcontractor hold the administrator harmless for an action arising under this section.

1916 Section 40. Section **63G-6a-103** is amended to read:

1917 **63G-6a-103. Definitions.**

1918 As used in this chapter:

1919 (1) "Approved vendor" means a person who has been approved for inclusion on an
1920 approved vendor list through the approved vendor list process.

1921 (2) "Approved vendor list" means a list of approved vendors established under Section
1922 [63G-6a-507](#).

1923 (3) "Approved vendor list process" means the procurement process described in
1924 Section [63G-6a-507](#).

1925 (4) "Bidder" means a person who submits a bid or price quote in response to an
1926 invitation for bids.

1927 (5) "Bidding process" means the procurement process described in Part 6, Bidding.

1928 (6) "Board" means the Utah State Procurement Policy Board, created in Section
1929 [63G-6a-202](#).

1930 [~~(7)~~] "~~Building board~~" means the ~~State Building Board~~, created in Section
1931 [63A-5b-201](#):-

1932 [~~(8)~~] (7) "Change directive" means a written order signed by the procurement officer
1933 that directs the contractor to suspend work or make changes, as authorized by contract, without
1934 the consent of the contractor.

1935 [~~(9)~~] (8) "Change order" means a written alteration in specifications, delivery point,
1936 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
1937 mutual agreement of the parties to the contract.

1938 [~~(10)~~] (9) "Chief procurement officer" means the individual appointed under Section
1939 [63A-2-102](#).

1940 [~~(11)~~] (10) "Conducting procurement unit" means a procurement unit that conducts all
1941 aspects of a procurement:

1942 (a) except:

1943 (i) reviewing a solicitation to verify that it is in proper form; and

1944 (ii) causing the publication of a notice of a solicitation; and

1945 (b) including:

- 1946 (i) preparing any solicitation document;
- 1947 (ii) appointing an evaluation committee;
- 1948 (iii) conducting the evaluation process, except the process relating to scores calculated
- 1949 for costs of proposals;
- 1950 (iv) selecting and recommending the person to be awarded a contract;
- 1951 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 1952 procurement unit's approval; and
- 1953 (vi) contract administration.

1954 [~~(12)~~] (11) "Conservation district" means the same as that term is defined in Section

1955 [17D-3-102](#).

1956 [~~(13)~~] (12) "Construction project":

1957 (a) means a project for the construction, renovation, alteration, improvement, or repair

1958 of a public facility on real property, including all services, labor, supplies, and materials for the

1959 project; and

1960 (b) does not include services and supplies for the routine, day-to-day operation, repair,

1961 or maintenance of an existing public facility.

1962 [~~(14)~~] (13) "Construction manager/general contractor":

1963 (a) means a contractor who enters into a contract:

1964 (i) for the management of a construction project; and

1965 (ii) that allows the contractor to subcontract for additional labor and materials that are

1966 not included in the contractor's cost proposal submitted at the time of the procurement of the

1967 contractor's services; and

1968 (b) does not include a contractor whose only subcontract work not included in the

1969 contractor's cost proposal submitted as part of the procurement of the contractor's services is to

1970 meet subcontracted portions of change orders approved within the scope of the project.

1971 [~~(15)~~] (14) "Construction subcontractor":

1972 (a) means a person under contract with a contractor or another subcontractor to provide

1973 services or labor for the design or construction of a construction project;

1974 (b) includes a general contractor or specialty contractor licensed or exempt from

1975 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

1976 (c) does not include a supplier who provides only materials, equipment, or supplies to a

1977 contractor or subcontractor for a construction project.

1978 [~~(16)~~] (15) "Contract" means an agreement for a procurement.

1979 [~~(17)~~] (16) "Contract administration" means all functions, duties, and responsibilities

1980 associated with managing, overseeing, and carrying out a contract between a procurement unit

1981 and a contractor, including:

1982 (a) implementing the contract;

1983 (b) ensuring compliance with the contract terms and conditions by the conducting

1984 procurement unit and the contractor;

1985 (c) executing change orders;

1986 (d) processing contract amendments;

1987 (e) resolving, to the extent practicable, contract disputes;

1988 (f) curing contract errors and deficiencies;

1989 (g) terminating a contract;

1990 (h) measuring or evaluating completed work and contractor performance;

1991 (i) computing payments under the contract; and

1992 (j) closing out a contract.

1993 [~~(18)~~] (17) "Contractor" means a person who is awarded a contract with a procurement

1994 unit.

1995 [~~(19)~~] (18) "Cooperative procurement" means procurement conducted by, or on behalf

1996 of:

1997 (a) more than one procurement unit; or

1998 (b) a procurement unit and a cooperative purchasing organization.

1999 [~~(20)~~] (19) "Cooperative purchasing organization" means an organization, association,

2000 or alliance of purchasers established to combine purchasing power in order to obtain the best
2001 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

2002 ~~[(21)]~~ (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
2003 contractor is paid a percentage of the total actual expenses or costs in addition to the
2004 contractor's actual expenses or costs.

2005 ~~[(22)]~~ (21) "Cost-reimbursement contract" means a contract under which a contractor
2006 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
2007 and the provisions of this chapter, and a fee, if any.

2008 ~~[(23)]~~ (22) "Days" means calendar days, unless expressly provided otherwise.

2009 ~~[(24)]~~ (23) "Definite quantity contract" means a fixed price contract that provides for a
2010 specified amount of supplies over a specified period, with deliveries scheduled according to a
2011 specified schedule.

2012 ~~[(25)]~~ (24) "Design professional" means:

2013 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
2014 Licensing Act;

2015 (b) an individual licensed as a professional engineer or professional land surveyor
2016 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
2017 Act; or

2018 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
2019 State Certification of Commercial Interior Designers Act.

2020 ~~[(26)]~~ (25) "Design professional procurement process" means the procurement process
2021 described in Part 15, Design Professional Services.

2022 ~~[(27)]~~ (26) "Design professional services" means:

2023 (a) professional services within the scope of the practice of architecture as defined in
2024 Section [58-3a-102](#);

2025 (b) professional engineering as defined in Section [58-22-102](#);

2026 (c) master planning and programming services; or

2027 (d) services within the scope of the practice of commercial interior design, as defined
2028 in Section [58-86-102](#).

2029 [~~28~~] [\(27\)](#) "Design-build" means the procurement of design professional services and
2030 construction by the use of a single contract.

2031 [~~29~~] [\(28\)](#) "Division" means the Division of Purchasing and General Services, created
2032 in Section [63A-2-101](#).

2033 [~~30~~] [\(29\)](#) "Educational procurement unit" means:

2034 (a) a school district;

2035 (b) a public school, including a local school board or a charter school;

2036 (c) the Utah Schools for the Deaf and the Blind;

2037 (d) the Utah Education and Telehealth Network;

2038 (e) an institution of higher education of the state described in Section [53B-1-102](#); or

2039 (f) the State Board of Education.

2040 [~~31~~] [\(30\)](#) "Established catalogue price" means the price included in a catalogue, price
2041 list, schedule, or other form that:

2042 (a) is regularly maintained by a manufacturer or contractor;

2043 (b) is published or otherwise available for inspection by customers; and

2044 (c) states prices at which sales are currently or were last made to a significant number
2045 of any category of buyers or buyers constituting the general buying public for the supplies or
2046 services involved.

2047 [~~32~~] [\(31\)](#) (a) "Executive branch procurement unit" means a department, division,
2048 office, bureau, agency, or other organization within the state executive branch.

2049 (b) "Executive branch procurement unit" does not include the Colorado River
2050 Authority of Utah as provided in Section [63M-14-210](#).

2051 [~~33~~] [\(32\)](#) "Facilities division" means the Division of Facilities Construction and
2052 Management, created in Section [63A-5b-301](#).

2053 [~~34~~] [\(33\)](#) "Fixed price contract" means a contract that provides a price, for each

2054 procurement item obtained under the contract, that is not subject to adjustment except to the
2055 extent that:

2056 (a) the contract provides, under circumstances specified in the contract, for an
2057 adjustment in price that is not based on cost to the contractor; or

2058 (b) an adjustment is required by law.

2059 [~~35~~] (34) "Fixed price contract with price adjustment" means a fixed price contract
2060 that provides for an upward or downward revision of price, precisely described in the contract,
2061 that:

2062 (a) is based on the consumer price index or another commercially acceptable index,
2063 source, or formula; and

2064 (b) is not based on a percentage of the cost to the contractor.

2065 [~~36~~] (35) "Grant" means an expenditure of public funds or other assistance, or an
2066 agreement to expend public funds or other assistance, for a public purpose authorized by law,
2067 without acquiring a procurement item in exchange.

2068 [~~37~~] (36) "Immaterial error":

2069 (a) means an irregularity or abnormality that is:

2070 (i) a matter of form that does not affect substance; or

2071 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
2072 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

2073 (b) includes:

2074 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
2075 professional license, bond, or insurance certificate;

2076 (ii) a typographical error;

2077 (iii) an error resulting from an inaccuracy or omission in the solicitation; and

2078 (iv) any other error that the procurement official reasonably considers to be immaterial.

2079 [~~38~~] (37) "Indefinite quantity contract" means a fixed price contract that:

2080 (a) is for an indefinite amount of procurement items to be supplied as ordered by a

2081 procurement unit; and

2082 (b) (i) does not require a minimum purchase amount; or

2083 (ii) provides a maximum purchase limit.

2084 [~~39~~] (38) "Independent procurement unit" means:

2085 (a) (i) a legislative procurement unit;

2086 (ii) a judicial branch procurement unit;

2087 (iii) an educational procurement unit;

2088 (iv) a local government procurement unit;

2089 (v) a conservation district;

2090 (vi) a local building authority;

2091 (vii) a local district;

2092 (viii) a public corporation;

2093 (ix) a special service district; or

2094 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);

2095 (b) [~~the building board or~~] the facilities division, but only to the extent of the

2096 procurement authority provided under Title 63A, Chapter 5b, Administration of State

2097 Facilities;

2098 (c) the attorney general, but only to the extent of the procurement authority provided

2099 under Title 67, Chapter 5, Attorney General;

2100 (d) the Department of Transportation, but only to the extent of the procurement

2101 authority provided under Title 72, Transportation Code; or

2102 (e) any other executive branch department, division, office, or entity that has statutory

2103 procurement authority outside this chapter, but only to the extent of that statutory procurement

2104 authority.

2105 [~~40~~] (39) "Invitation for bids":

2106 (a) means a document used to solicit:

2107 (i) bids to provide a procurement item to a procurement unit; or

2108 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
2109 (b) includes all documents attached to or incorporated by reference in a document
2110 described in Subsection [~~(40)~~] (39)(a).

2111 [~~(41)~~] (40) "Issuing procurement unit" means a procurement unit that:

- 2112 (a) reviews a solicitation to verify that it is in proper form;
- 2113 (b) causes the notice of a solicitation to be published; and
- 2114 (c) negotiates and approves the terms and conditions of a contract.

2115 [~~(42)~~] (41) "Judicial procurement unit" means:

- 2116 (a) the Utah Supreme Court;
- 2117 (b) the Utah Court of Appeals;
- 2118 (c) the Judicial Council;
- 2119 (d) a state judicial district; or
- 2120 (e) an office, committee, subcommittee, or other organization within the state judicial
2121 branch.

2122 [~~(43)~~] (42) "Labor hour contract" is a contract under which:

- 2123 (a) the supplies and materials are not provided by, or through, the contractor; and
- 2124 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
2125 profit for a specified number of labor hours or days.

2126 [~~(44)~~] (43) "Legislative procurement unit" means:

- 2127 (a) the Legislature;
- 2128 (b) the Senate;
- 2129 (c) the House of Representatives;
- 2130 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 2131 (e) a committee, subcommittee, commission, or other organization:
 - 2132 (i) within the state legislative branch; or
 - 2133 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
 - 2134 (B) the membership of which includes legislators; and

2135 (C) for which the Office of Legislative Research and General Counsel provides staff
2136 support.

2137 [~~(45)~~] (44) "Local building authority" means the same as that term is defined in Section
2138 17D-2-102.

2139 [~~(46)~~] (45) "Local district" means the same as that term is defined in Section
2140 17B-1-102.

2141 [~~(47)~~] (46) "Local government procurement unit" means:

2142 (a) a county or municipality, and each office or agency of the county or municipality,
2143 unless the county or municipality adopts its own procurement code by ordinance;

2144 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
2145 office or agency of that county or municipality; or

2146 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
2147 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
2148 office or agency of that county or municipality.

2149 [~~(48)~~] (47) "Multiple award contracts" means the award of a contract for an indefinite
2150 quantity of a procurement item to more than one person.

2151 [~~(49)~~] (48) "Multiyear contract" means a contract that extends beyond a one-year
2152 period, including a contract that permits renewal of the contract, without competition, beyond
2153 the first year of the contract.

2154 [~~(50)~~] (49) "Municipality" means a city, town, or metro township.

2155 [~~(51)~~] (50) "Nonadopting local government procurement unit" means:

2156 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
2157 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
2158 General Provisions Related to Protest or Appeal; and

2159 (b) each office or agency of a county or municipality described in Subsection [~~(51)~~]
2160 (50)(a).

2161 [~~(52)~~] (51) "Offeror" means a person who submits a proposal in response to a request

2162 for proposals.

2163 [~~(53)~~] (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
2164 preference under the requirements of this chapter.

2165 [~~(54)~~] (53) "Procure" means to acquire a procurement item through a procurement.

2166 [~~(55)~~] (54) "Procurement" means the acquisition of a procurement item through an
2167 expenditure of public funds, or an agreement to expend public funds, including an acquisition
2168 through a public-private partnership.

2169 [~~(56)~~] (55) "Procurement item" means an item of personal property, a technology, a
2170 service, or a construction project.

2171 [~~(57)~~] (56) "Procurement official" means:

2172 (a) for a procurement unit other than an independent procurement unit, the chief
2173 procurement officer;

2174 (b) for a legislative procurement unit, the individual, individuals, or body designated in
2175 a policy adopted by the Legislative Management Committee;

2176 (c) for a judicial procurement unit, the Judicial Council or an individual or body
2177 designated by the Judicial Council by rule;

2178 (d) for a local government procurement unit:

2179 (i) the legislative body of the local government procurement unit; or

2180 (ii) an individual or body designated by the local government procurement unit;

2181 (e) for a local district, the board of trustees of the local district or the board of trustees'
2182 designee;

2183 (f) for a special service district, the governing body of the special service district or the
2184 governing body's designee;

2185 (g) for a local building authority, the board of directors of the local building authority
2186 or the board of directors' designee;

2187 (h) for a conservation district, the board of supervisors of the conservation district or
2188 the board of supervisors' designee;

2189 (i) for a public corporation, the board of directors of the public corporation or the board
2190 of directors' designee;

2191 (j) for a school district or any school or entity within a school district, the board of the
2192 school district or the board's designee;

2193 (k) for a charter school, the individual or body with executive authority over the charter
2194 school or the designee of the individual or body;

2195 (l) for an institution of higher education described in Section 53B-2-101, the president
2196 of the institution of higher education or the president's designee;

2197 (m) for the State Board of Education, the State Board of Education or the State Board
2198 of Education's designee;

2199 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
2200 the designee of the Commissioner of Higher Education;

2201 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
2202 executive director of the Utah Communications Authority or the executive director's designee;
2203 or

2204 ~~[(p) (i) for the building board, and only to the extent of procurement activities of the~~
2205 ~~building board as an independent procurement unit under the procurement authority provided~~
2206 ~~under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building~~
2207 ~~board or the director's designee;]~~

2208 ~~[(ii)] (p) (i)~~ for the facilities division, and only to the extent of procurement activities
2209 of the facilities division as an independent procurement unit under the procurement authority
2210 provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the
2211 facilities division or the director's designee;

2212 ~~[(iii)] (ii)~~ for the attorney general, and only to the extent of procurement activities of
2213 the attorney general as an independent procurement unit under the procurement authority
2214 provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney
2215 general's designee;

2216 [~~(iv)~~] (iii) for the Department of Transportation created in Section 72-1-201, and only
2217 to the extent of procurement activities of the Department of Transportation as an independent
2218 procurement unit under the procurement authority provided under Title 72, Transportation
2219 Code, the executive director of the Department of Transportation or the executive director's
2220 designee; or

2221 [~~(v)~~] (iv) for any other executive branch department, division, office, or entity that has
2222 statutory procurement authority outside this chapter, and only to the extent of the procurement
2223 activities of the department, division, office, or entity as an independent procurement unit
2224 under the procurement authority provided outside this chapter for the department, division,
2225 office, or entity, the chief executive officer of the department, division, office, or entity or the
2226 chief executive officer's designee.

2227 [~~(58)~~] (57) "Procurement unit":

2228 (a) means:

2229 (i) a legislative procurement unit;

2230 (ii) an executive branch procurement unit;

2231 (iii) a judicial procurement unit;

2232 (iv) an educational procurement unit;

2233 (v) the Utah Communications Authority, established in Section 63H-7a-201;

2234 (vi) a local government procurement unit;

2235 (vii) a local district;

2236 (viii) a special service district;

2237 (ix) a local building authority;

2238 (x) a conservation district;

2239 (xi) a public corporation; and

2240 (b) does not include a political subdivision created under Title 11, Chapter 13,

2241 Interlocal Cooperation Act.

2242 [~~(59)~~] (58) "Professional service" means labor, effort, or work that requires specialized

2243 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 2244 (a) accounting;
- 2245 (b) administrative law judge service;
- 2246 (c) architecture;
- 2247 (d) construction design and management;
- 2248 (e) engineering;
- 2249 (f) financial services;
- 2250 (g) information technology;
- 2251 (h) the law;
- 2252 (i) medicine;
- 2253 (j) psychiatry; or
- 2254 (k) underwriting.

2255 [~~(60)~~] (59) "Protest officer" means:

- 2256 (a) for the division or an independent procurement unit:
 - 2257 (i) the procurement official;
 - 2258 (ii) the procurement official's designee who is an employee of the procurement unit; or
 - 2259 (iii) a person designated by rule made by the rulemaking authority; or
- 2260 (b) for a procurement unit other than an independent procurement unit, the chief
- 2261 procurement officer or the chief procurement officer's designee who is an employee of the
- 2262 division.

2263 [~~(61)~~] (60) "Public corporation" means the same as that term is defined in Section

2264 [63E-1-102](#).

2265 [~~(62)~~] (61) "Public entity" means the state or any other government entity within the

2266 state that expends public funds.

2267 [~~(63)~~] (62) "Public facility" means a building, structure, infrastructure, improvement,

2268 or other facility of a public entity.

2269 [~~(64)~~] (63) "Public funds" means money, regardless of its source, including from the

2270 federal government, that is owned or held by a procurement unit.

2271 ~~[(65)]~~ (64) "Public transit district" means a public transit district organized under Title
2272 17B, Chapter 2a, Part 8, Public Transit District Act.

2273 ~~[(66)]~~ (65) "Public-private partnership" means an arrangement or agreement, occurring
2274 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
2275 for a public need through the development or operation of a project in which the contractor or
2276 contractors share with the procurement unit the responsibility or risk of developing, owning,
2277 maintaining, financing, or operating the project.

2278 ~~[(67)]~~ (66) "Qualified vendor" means a vendor who:

2279 (a) is responsible; and

2280 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that
2281 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
2282 thresholds set forth in the request for statement of qualifications.

2283 ~~[(68)]~~ (67) "Real property" means land and any building, fixture, improvement,
2284 appurtenance, structure, or other development that is permanently affixed to land.

2285 ~~[(69)]~~ (68) "Request for information" means a nonbinding process through which a
2286 procurement unit requests information relating to a procurement item.

2287 ~~[(70)]~~ (69) "Request for proposals" means a document used to solicit proposals to
2288 provide a procurement item to a procurement unit, including all other documents that are
2289 attached to that document or incorporated in that document by reference.

2290 ~~[(71)]~~ (70) "Request for proposals process" means the procurement process described
2291 in Part 7, Request for Proposals.

2292 ~~[(72)]~~ (71) "Request for statement of qualifications" means a document used to solicit
2293 information about the qualifications of a person interested in responding to a potential
2294 procurement, including all other documents attached to that document or incorporated in that
2295 document by reference.

2296 ~~[(73)]~~ (72) "Requirements contract" means a contract:

2297 (a) under which a contractor agrees to provide a procurement unit's entire requirements
2298 for certain procurement items at prices specified in the contract during the contract period; and

2299 (b) that:

2300 (i) does not require a minimum purchase amount; or

2301 (ii) provides a maximum purchase limit.

2302 [(74)] (73) "Responsible" means being capable, in all respects, of:

2303 (a) meeting all the requirements of a solicitation; and

2304 (b) fully performing all the requirements of the contract resulting from the solicitation,
2305 including being financially solvent with sufficient financial resources to perform the contract.

2306 [(75)] (74) "Responsive" means conforming in all material respects to the requirements
2307 of a solicitation.

2308 [(76)] (75) "Rule" includes a policy or regulation adopted by the rulemaking authority,
2309 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
2310 provisions that govern the applicable procurement unit.

2311 [(77)] (76) "Rulemaking authority" means:

2312 (a) for a legislative procurement unit, the Legislative Management Committee;

2313 (b) for a judicial procurement unit, the Judicial Council;

2314 (c) (i) only to the extent of the procurement authority expressly granted to the
2315 procurement unit by statute:

2316 (A) for [~~the building board or~~] the facilities division, the [~~building board~~] facilities
2317 division;

2318 (B) for the Office of the Attorney General, the attorney general;

2319 (C) for the Department of Transportation created in Section 72-1-201, the executive
2320 director of the Department of Transportation; and

2321 (D) for any other executive branch department, division, office, or entity that has
2322 statutory procurement authority outside this chapter, the governing authority of the department,
2323 division, office, or entity; and

- 2324 (ii) for each other executive branch procurement unit, the board;
- 2325 (d) for a local government procurement unit:
- 2326 (i) the governing body of the local government unit; or
- 2327 (ii) an individual or body designated by the local government procurement unit;
- 2328 (e) for a school district or a public school, the board, except to the extent of a school
- 2329 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 2330 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 2331 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
- 2332 State Board of Education;
- 2333 (h) for a public transit district, the chief executive of the public transit district;
- 2334 (i) for a local district other than a public transit district or for a special service district,
- 2335 the board, except to the extent that the board of trustees of the local district or the governing
- 2336 body of the special service district makes its own rules:
- 2337 (i) with respect to a subject addressed by board rules; or
- 2338 (ii) that are in addition to board rules;
- 2339 (j) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the Utah
- 2340 Board of Higher Education;
- 2341 (k) for the School and Institutional Trust Lands Administration, created in Section
- 2342 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;
- 2343 (l) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),
- 2344 the School and Institutional Trust Fund Board of Trustees;
- 2345 (m) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
- 2346 Utah Communications Authority board, created in Section [63H-7a-203](#); or
- 2347 (n) for any other procurement unit, the board.
- 2348 [~~78~~] (77) "Service":
- 2349 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
- 2350 unit;

2351 (b) includes a professional service; and
2352 (c) does not include labor, effort, or work provided under an employment agreement or
2353 a collective bargaining agreement.

2354 [~~(79)~~] (78) "Small purchase process" means the procurement process described in
2355 Section [63G-6a-506](#).

2356 [~~(80)~~] (79) "Sole source contract" means a contract resulting from a sole source
2357 procurement.

2358 [~~(81)~~] (80) "Sole source procurement" means a procurement without competition
2359 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
2360 for the procurement item.

2361 [~~(82)~~] (81) "Solicitation" means an invitation for bids, request for proposals, or request
2362 for statement of qualifications.

2363 [~~(83)~~] (82) "Solicitation response" means:

- 2364 (a) a bid submitted in response to an invitation for bids;
2365 (b) a proposal submitted in response to a request for proposals; or
2366 (c) a statement of qualifications submitted in response to a request for statement of
2367 qualifications.

2368 [~~(84)~~] (83) "Special service district" means the same as that term is defined in Section
2369 [17D-1-102](#).

2370 [~~(85)~~] (84) "Specification" means any description of the physical or functional
2371 characteristics or of the nature of a procurement item included in an invitation for bids or a
2372 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
2373 description of:

- 2374 (a) a requirement for inspecting or testing a procurement item; or
2375 (b) preparing a procurement item for delivery.

2376 [~~(86)~~] (85) "Standard procurement process" means:

- 2377 (a) the bidding process;

- 2378 (b) the request for proposals process;
- 2379 (c) the approved vendor list process;
- 2380 (d) the small purchase process; or
- 2381 (e) the design professional procurement process.
- 2382 ~~[(87)]~~ (86) "State cooperative contract" means a contract awarded by the division for
- 2383 and in behalf of all public entities.
- 2384 ~~[(88)]~~ (87) "Statement of qualifications" means a written statement submitted to a
- 2385 procurement unit in response to a request for statement of qualifications.
- 2386 ~~[(89)]~~ (88) "Subcontractor":
- 2387 (a) means a person under contract to perform part of a contractual obligation under the
- 2388 control of the contractor, whether the person's contract is with the contractor directly or with
- 2389 another person who is under contract to perform part of a contractual obligation under the
- 2390 control of the contractor; and
- 2391 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services
- 2392 to a contractor.
- 2393 ~~[(90)]~~ (89) "Technology" means the same as "information technology," as defined in
- 2394 Section [63A-16-102](#).
- 2395 ~~[(91)]~~ (90) "Tie bid" means that the lowest responsive bids of responsible bidders are
- 2396 identical in price.
- 2397 ~~[(92)]~~ (91) "Time and materials contract" means a contract under which the contractor
- 2398 is paid:
- 2399 (a) the actual cost of direct labor at specified hourly rates;
- 2400 (b) the actual cost of materials and equipment usage; and
- 2401 (c) an additional amount, expressly described in the contract, to cover overhead and
- 2402 profit, that is not based on a percentage of the cost to the contractor.
- 2403 ~~[(93)]~~ (92) "Transitional costs":
- 2404 (a) means the costs of changing:

- 2405 (i) from an existing provider of a procurement item to another provider of that
2406 procurement item; or
- 2407 (ii) from an existing type of procurement item to another type;
- 2408 (b) includes:
- 2409 (i) training costs;
- 2410 (ii) conversion costs;
- 2411 (iii) compatibility costs;
- 2412 (iv) costs associated with system downtime;
- 2413 (v) disruption of service costs;
- 2414 (vi) staff time necessary to implement the change;
- 2415 (vii) installation costs; and
- 2416 (viii) ancillary software, hardware, equipment, or construction costs; and
- 2417 (c) does not include:
- 2418 (i) the costs of preparing for or engaging in a procurement process; or
- 2419 (ii) contract negotiation or drafting costs.
- 2420 [~~94~~] (93) "Vendor":
- 2421 (a) means a person who is seeking to enter into a contract with a procurement unit to
2422 provide a procurement item; and
- 2423 (b) includes:
- 2424 (i) a bidder;
- 2425 (ii) an offeror;
- 2426 (iii) an approved vendor;
- 2427 (iv) a design professional; and
- 2428 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).
- 2429 Section 41. Section **63G-6a-109** is amended to read:
- 2430 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**
- 2431 (1) With respect to a procurement by an executive branch procurement unit, except for

2432 a procurement by an executive branch procurement unit that, under Subsection
2433 ~~63G-6a-103(39)~~(38)(b), (c), (d), or (e), is designated as an independent procurement unit:

2434 (a) the division is the issuing procurement unit; and

2435 (b) the executive branch procurement unit is the conducting procurement unit and is
2436 responsible to ensure that the procurement is conducted in compliance with this chapter.

2437 (2) With respect to a procurement by any other procurement unit, the procurement unit
2438 is both the issuing procurement unit and the conducting procurement unit.

2439 (3) A conducting procurement unit is responsible for contract administration.

2440 Section 42. Section ~~63G-6a-204~~ is amended to read:

2441 **63G-6a-204. Applicability of rules of Utah State Procurement Policy Board and**
2442 **Division of Facilities Construction and Management -- Report to interim committee.**

2443 (1) Except as provided in Subsection (2), rules made by the board under this chapter
2444 shall govern all procurement units for which the board is the rulemaking authority.

2445 (2) The ~~[building board]~~ facilities division rules governing procurement of
2446 construction, design professional services, and leases apply to the procurement of construction,
2447 design professional services, and leases of real property by the facilities division.

2448 (3) A rulemaking authority may make its own rules, consistent with this chapter,
2449 governing procurement by a person over which the rulemaking authority has rulemaking
2450 authority.

2451 (4) The board shall make a report on or before July 1 of each year to a legislative
2452 interim committee, designated by the Legislative Management Committee created under
2453 Section ~~36-12-6~~, on the establishment, implementation, and enforcement of the rules made
2454 under Section ~~63G-6a-203~~.

2455 Section 43. Section ~~63G-6a-303~~ is amended to read:

2456 **63G-6a-303. Role, duties, and authority of chief procurement officer.**

2457 (1) The chief procurement officer:

2458 (a) is the director of the division;

2459 (b) serves as the central procurement officer of the state;
2460 (c) serves as a voting member of the board; and
2461 (d) serves as the protest officer for a protest relating to a procurement of an executive
2462 branch procurement, except an executive branch procurement unit designated under Subsection
2463 [63G-6a-103](#)~~(39)~~(38)(b), (c), (d), or (e) as an independent procurement unit, or a state
2464 cooperative contract procurement, unless the chief procurement officer designates another to
2465 serve as protest officer, as authorized in this chapter.

2466 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

2467 (a) develop procurement policies and procedures supporting ethical procurement
2468 practices, fair and open competition among vendors, and transparency within the state's
2469 procurement process;

2470 (b) administer the state's cooperative purchasing program, including state cooperative
2471 contracts and associated administrative fees;

2472 (c) enter into an agreement with a public entity for services provided by the division, if
2473 the agreement is in the best interest of the state;

2474 (d) ensure the division's compliance with any applicable law, rule, or policy, including
2475 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
2476 conducting procurement unit, or as the state's central procurement organization;

2477 (e) manage the division's electronic procurement system;

2478 (f) oversee the recruitment, training, career development, certification requirements,
2479 and performance evaluation of the division's procurement personnel;

2480 (g) make procurement training available to procurement units and persons who do
2481 business with procurement units;

2482 (h) provide exemplary customer service and continually improve the division's
2483 procurement operations;

2484 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
2485 all other functions authorized under this chapter; and

2486 (j) ensure that any training described in this Subsection (2) complies with Title 63G,
2487 Chapter 22, State Training and Certification Requirements.

2488 (3) With respect to a procurement or contract over which the chief procurement officer
2489 has authority under this chapter, the chief procurement officer, except as otherwise provided in
2490 this chapter:

2491 (a) shall:

2492 (i) manage and supervise a procurement to ensure to the extent practicable that
2493 taxpayers receive the best value;

2494 (ii) prepare and issue standard specifications for procurement items;

2495 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
2496 approve change orders;

2497 (iv) in accordance with Section 63A-16-204, coordinate with the Division of
2498 Technology Services, created in Section 63A-16-103, with respect to the procurement of
2499 information technology services by an executive branch procurement unit;

2500 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
2501 the procurement is out of compliance with this chapter or a board rule;

2502 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
2503 contract at any time during the term of the contract if:

2504 (A) the contract is out of compliance with this chapter or a board rule; and

2505 (B) the chief procurement officer determines that correcting, amending, or canceling
2506 the contract is in the best interest of the state; and

2507 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
2508 attorney general's office; and

2509 (b) may:

2510 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
2511 and control to ensure compliance with this chapter;

2512 (ii) delegate duties and authority to an employee of the division, as the chief

2513 procurement officer considers appropriate;

2514 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance

2515 with the law and after consultation with the attorney general's office;

2516 (iv) authorize a procurement unit to make a procurement pursuant to a regional

2517 solicitation, as defined in Subsection [63G-6a-2105\(7\)](#), even if the procurement item is also

2518 offered under a state cooperative contract, if the chief procurement officer determines that the

2519 procurement pursuant to a regional solicitation is in the best interest of the acquiring

2520 procurement unit; and

2521 (v) remove an individual from the procurement process or contract administration for:

2522 (A) having a conflict of interest or the appearance of a conflict of interest with a person

2523 responding to a solicitation or with a contractor;

2524 (B) having a bias or the appearance of bias for or against a person responding to a

2525 solicitation or for or against a contractor;

2526 (C) making an inconsistent or unexplainable score for a solicitation response;

2527 (D) having inappropriate contact or communication with a person responding to a

2528 solicitation;

2529 (E) socializing inappropriately with a person responding to a solicitation or with a

2530 contractor;

2531 (F) engaging in any other action or having any other association that causes the chief

2532 procurement officer to conclude that the individual cannot fairly evaluate a solicitation

2533 response or administer a contract; or

2534 (G) any other violation of a law, rule, or policy.

2535 (4) The chief procurement officer may not delegate to an individual outside the

2536 division the chief procurement officer's authority over a procurement described in Subsection

2537 (3)(a)(iv).

2538 (5) The chief procurement officer has final authority to determine whether an executive

2539 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to

2540 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
2541 chapter.

2542 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
2543 review, monitor, and audit the procurement activities and delegated procurement authority of
2544 an executive branch procurement unit, except to the extent that an executive branch
2545 procurement unit is designated under Subsection 63G-6a-103(39)(b), (c), (d), or (e) as an
2546 independent procurement unit, to ensure compliance with this chapter, rules made by the
2547 applicable rulemaking authority, and division policies.

2548 Section 44. Section 63G-6a-1302 is amended to read:

2549 **63G-6a-1302. Alternative methods of construction contracting management.**

2550 (1) A rulemaking authority shall, by rule provide as many alternative methods of
2551 construction contracting management as determined to be feasible.

2552 (2) The rules described in Subsection (1) shall:

2553 (a) grant to the procurement official responsible for carrying out the construction
2554 project the discretion to select the appropriate method of construction contracting management
2555 for a particular project; and

2556 (b) require the procurement official to execute and include in the contract file a written
2557 statement describing the facts that led to the selection of a particular method of construction
2558 contracting management for each project.

2559 (3) Before choosing a construction contracting management method, the procurement
2560 official responsible for carrying out the construction project shall consider the following
2561 factors:

2562 (a) when the project must be ready to be occupied;

2563 (b) the type of project;

2564 (c) the extent to which the requirements of the procurement unit, and the way they are
2565 to be met are known;

2566 (d) the location of the project;

- 2567 (e) the size, scope, complexity, and economics of the project;
- 2568 (f) the source of funding and any resulting constraints necessitated by the funding
- 2569 source;
- 2570 (g) the availability, qualification, and experience of public personnel to be assigned to
- 2571 the project and the amount of time that the public personnel can devote to the project; and
- 2572 (h) the availability, qualifications, and experience of outside consultants and
- 2573 contractors to complete the project under the various methods being considered.
- 2574 (4) A rulemaking authority may make rules that authorize the use of a construction
- 2575 manager/general contractor as one method of construction contracting management.
- 2576 (5) The rules described in Subsection (2) shall require that:
- 2577 (a) the construction manager/general contractor be selected using:
- 2578 (i) a standard procurement process; or
- 2579 (ii) an exception to the requirement to use a standard procurement process, described in
- 2580 Part 8, Exceptions to Procurement Requirements; and
- 2581 (b) when entering into a subcontract that was not specifically included in the
- 2582 construction manager/general contractor's cost proposal, the construction manager/general
- 2583 contractor shall procure the subcontractor by using a standard procurement process, or an
- 2584 exception to the requirement to use a standard procurement process, described in Part 8,
- 2585 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was
- 2586 procured directly by the procurement unit.
- 2587 (6) Procurement rules adopted by the [~~building board~~] facilities division under
- 2588 Subsections (1) through (3) for state building construction projects may authorize the use of a
- 2589 design-build provider as one method of construction contracting management.
- 2590 (7) A design-build contract may include a provision for obtaining the site for the
- 2591 construction project.
- 2592 (8) A design-build contract or a construction manager/general contractor contract may
- 2593 include provision by the contractor of operations, maintenance, or financing.

2594 Section 45. Section **63H-6-103** is amended to read:

2595 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**

2596 (1) There is created an independent public nonprofit corporation known as the "Utah
2597 State Fair Corporation."

2598 (2) The board shall file articles of incorporation for the corporation with the Division
2599 of Corporations and Commercial Code.

2600 (3) The corporation, subject to this chapter, has all powers and authority permitted
2601 nonprofit corporations by law.

2602 (4) The corporation shall:

2603 (a) manage, supervise, and control:

2604 (i) all activities relating to the annual exhibition described in Subsection (4)(j); and

2605 (ii) except as otherwise provided by statute, all state expositions, including setting the
2606 time, place, and purpose of any state exposition;

2607 (b) for public entertainment, displays, and exhibits or similar events:

2608 (i) provide, sponsor, or arrange the events;

2609 (ii) publicize and promote the events; and

2610 (iii) secure funds to cover the cost of the exhibits from:

2611 (A) private contributions;

2612 (B) public appropriations;

2613 (C) admission charges; and

2614 (D) other lawful means;

2615 (c) acquire and designate exposition sites;

2616 (d) use generally accepted accounting principles in accounting for the corporation's
2617 assets, liabilities, and operations;

2618 (e) seek corporate sponsorships for the state fair park or for individual buildings or
2619 facilities within the fair park;

2620 (f) work with county and municipal governments, the Salt Lake Convention and

2621 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote
2622 expositions and the use of the state fair park;

2623 (g) develop and maintain a marketing program to promote expositions and the use of
2624 the state fair park;

2625 (h) in accordance with provisions of this part, operate and maintain the state fair park,
2626 including the physical appearance and structural integrity of the state fair park and the
2627 buildings located at the state fair park;

2628 (i) prepare an economic development plan for the state fair park;

2629 (j) hold an annual exhibition that:

2630 (i) is called the state fair or a similar name;

2631 (ii) promotes and highlights agriculture throughout the state;

2632 (iii) includes expositions of livestock, poultry, agricultural, domestic science,
2633 horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic
2634 animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and
2635 educational pursuits and the sharing of talents among the people of Utah;

2636 (iv) includes the award of premiums for the best specimens of the exhibited articles
2637 and animals;

2638 (v) permits competition by livestock exhibited by citizens of other states and territories
2639 of the United States; and

2640 (vi) is arranged according to plans approved by the board;

2641 (k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);
2642 and

2643 (l) publish a list of premiums that will be awarded at the annual exhibition described in
2644 Subsection (4)(j) for the best specimens of exhibited articles and animals.

2645 (5) In addition to the annual exhibition described in Subsection (4)(j), the corporation
2646 may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural,
2647 floricultural, mineral and industrial products, manufactured articles, and domestic animals that,

2648 in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational
2649 pursuits and the sharing of talents among the people of Utah.

2650 (6) The corporation may:

2651 (a) employ advisers, consultants, and agents, including financial experts and
2652 independent legal counsel, and fix their compensation;

2653 (b) (i) participate in the state's Risk Management Fund created under Section
2654 [63A-4-201](#) or any captive insurance company created by the risk manager; or

2655 (ii) procure insurance against any loss in connection with the corporation's property
2656 and other assets, including mortgage loans;

2657 (c) receive and accept aid or contributions of money, property, labor, or other things of
2658 value from any source, including any grants or appropriations from any department, agency, or
2659 instrumentality of the United States or Utah;

2660 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
2661 purposes of the corporation, subject to the conditions, if any, upon which the aid and
2662 contributions were made;

2663 (e) enter into management agreements with any person or entity for the performance of
2664 the corporation's functions or powers;

2665 (f) establish whatever accounts and procedures as necessary to budget, receive, and
2666 disburse, account for, and audit all funds received, appropriated, or generated;

2667 (g) subject to Subsection (8), lease any of the facilities at the state fair park;

2668 (h) sponsor events as approved by the board; and

2669 (i) enter into one or more agreements to develop the state fair park.

2670 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the
2671 corporation is exempt from:

2672 (i) Title 51, Chapter 5, Funds Consolidation Act;

2673 (ii) Title 51, Chapter 7, State Money Management Act;

2674 (iii) Title 63A, Utah Government Operations Code;

- 2675 (iv) Title 63J, Chapter 1, Budgetary Procedures Act; and
2676 (v) Title 63A, Chapter 17, Utah State Personnel Management Act.
2677 (b) The board shall adopt policies parallel to and consistent with:
2678 (i) Title 51, Chapter 5, Funds Consolidation Act;
2679 (ii) Title 51, Chapter 7, State Money Management Act;
2680 (iii) Title 63A, Utah Government Operations Code; and
2681 (iv) Title 63J, Chapter 1, Budgetary Procedures Act.
2682 (c) The corporation shall comply with:
2683 (i) Title 52, Chapter 4, Open and Public Meetings Act;
2684 (ii) Title 63G, Chapter 2, Government Records Access and Management Act;
2685 (iii) the provisions of Section 67-3-12;
2686 (iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:
2687 (A) entertainment provided at the state fair park;
2688 (B) judges for competitive exhibits; or
2689 (C) sponsorship of an event at the state fair park; and
2690 (v) the legislative approval requirements for new facilities established in Section
2691 63A-5b-404.
2692 (8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a
2693 term of 10 or more years, the corporation shall:
2694 (i) submit the proposed lease to the [~~State Building Board~~] division for the [~~State~~
2695 ~~Building Board's~~] division's approval or rejection; and
2696 (ii) if the [~~State Building Board~~] division approves the proposed lease, submit the
2697 proposed lease to the Executive Appropriations Committee for the Executive Appropriation
2698 Committee's review and recommendation in accordance with Subsection (8)(b).
2699 (b) The Executive Appropriations Committee shall review a proposed lease submitted
2700 in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:
2701 (i) execute the proposed sublease; or

- 2702 (ii) reject the proposed sublease.
- 2703 Section 46. Section **63H-6-108** is amended to read:
- 2704 **63H-6-108. Operation of the state fair park.**
- 2705 (1) The corporation shall:
- 2706 (a) operate and maintain the state fair park in accordance with the facility maintenance
- 2707 standards approved by the [~~State Building Board~~] division;
- 2708 (b) pay for all costs associated with operating and maintaining the state fair park;
- 2709 (c) obtain approval from the division before the corporation commences capital
- 2710 developments or capital improvements on the state fair park that involve:
- 2711 (i) a construction project that costs more than \$250,000; or
- 2712 (ii) the construction of a new building that costs more than \$1,000,000;
- 2713 (d) obtain a building permit from the division before commencing an activity that
- 2714 requires a building permit;
- 2715 (e) ensure that:
- 2716 (i) any design plan related to the state fair park satisfies any applicable design standards
- 2717 established by the division [~~or the State Building Board~~]; and
- 2718 (ii) construction performed on the state fair park satisfies any applicable construction
- 2719 standards established by the division [~~or the State Building Board~~];
- 2720 (f) for any new construction project on the state fair park that costs \$250,000 or more:
- 2721 (i) notify the division before commencing the new construction project; and
- 2722 (ii) coordinate with the division regarding review of design plans and construction
- 2723 management;
- 2724 (g) obtain approval from the division before the corporation makes any alteration or
- 2725 addition to the water system, heating system, plumbing system, air conditioning system, or
- 2726 electrical system;
- 2727 (h) obtain approval from the [~~State Building Board~~] division before the corporation
- 2728 demolishes a building or facility on the state fair park;

- 2729 (i) keep the state fair park fully insured to protect against loss or damage by fire,
2730 vandalism, or malicious mischief;
- 2731 (j) in accordance with Subsection (3), at the corporation's expense, and for the mutual
2732 benefit of the division, maintain general public liability insurance in an amount equal to at least
2733 \$1,000,000 through one or more companies that are:
- 2734 (i) licensed to do business in the state;
- 2735 (ii) selected by the corporation; and
- 2736 (iii) approved by the division and the Division of Risk Management;
- 2737 (k) ensure that the division is an additional insured with primary coverage on each
2738 insurance policy that the corporation obtains in accordance with this section;
- 2739 (l) give the division notice at least 30 days before the day on which the corporation
2740 cancels any insurance policy that the corporation obtains in accordance with this section; and
- 2741 (m) if any lien is recorded or filed against the state fair park as a result of an act or
2742 omission of the corporation, cause the lien to be satisfied or cancelled within 10 days after the
2743 day on which the corporation receives notice of the lien.
- 2744 (2) ~~[The State Building Board]~~ At least 90 calendar days before demolition work
2745 begins, the division shall notify the State Historic Preservation Office of any ~~[State Building~~
2746 ~~Board meeting at which the State Building Board will consider approval]~~ division plan to
2747 demolish a facility on the state fair park.
- 2748 (3) The general public liability insurance described in Subsection (1)(j) shall:
- 2749 (a) insure against any claim for personal injury, death, or property damage that occurs
2750 at the state fair park; and
- 2751 (b) be a blanket policy that covers all activities of the corporation.
- 2752 (4) The division shall administer any capital improvements on the state fair park that
2753 cost more than \$250,000.
- 2754 (5) Upon 24 hours notice to the corporation, the division may enter the state fair park
2755 to inspect the state fair park and make any repairs that the division determines necessary.

2756 (6) If the corporation no longer operates as an independent public nonprofit corporation
2757 as described in this chapter, the state shall assume the responsibilities of the corporation under
2758 any contract that is:

2759 (a) in effect as of the day on which the status of the corporation changes; and

2760 (b) for the lease, construction, or development of a building or facility on the state fair
2761 park.

2762 (7) (a) A debt or obligation contracted by the corporation is a debt or obligation of the
2763 corporation.

2764 (b) The state is not liable and assumes no responsibility for any debt or obligation
2765 described in Subsection (7)(a), unless the Legislature expressly:

2766 (i) authorizes the corporation to contract for the debt or obligation; and

2767 (ii) accepts liability or assumes responsibility for the debt or obligation.

2768 (8) The provisions of this section apply notwithstanding any contrary provision in Title
2769 63A, Chapter 5b, Administration of State Facilities.

2770 Section 47. Section **63J-4-401** is amended to read:

2771 **63J-4-401. Planning coordinator appointment, functions, and duties.**

2772 (1) (a) The executive director shall appoint a planning coordinator to perform the
2773 functions and duties stated in this section.

2774 (b) The planning coordinator serves at the pleasure of and under the direction of the
2775 executive director.

2776 (2) The planning coordinator shall:

2777 (a) act as the governor's adviser on state, regional, metropolitan, and local
2778 governmental planning matters relating to public improvements and land use;

2779 (b) counsel with the authorized representatives of the Department of Transportation,
2780 the ~~[State Building Board]~~ Division of Facilities Construction and Management, the
2781 Department of Health, the Department of Workforce Services, the Labor Commission, the
2782 Department of Natural Resources, the School and Institutional Trust Lands Administration, and

- 2783 other proper persons concerning all state planning matters;
- 2784 (c) when designated to do so by the governor, receive funds made available to the state
2785 by the federal government;
- 2786 (d) receive, review, and provide an internet-accessible repository of plans and studies
2787 of the various state agencies and political subdivisions relating to public improvements,
2788 housing, land use, economic development, transportation infrastructure, water infrastructure,
2789 and utility infrastructure;
- 2790 (e) if a conflict occurs between the plans and proposals of state agencies, prepare
2791 specific recommendations for the resolution of the conflict and submit the recommendations to
2792 the governor for a decision resolving the conflict;
- 2793 (f) if a conflict occurs between the plans and proposals of a state agency and a political
2794 subdivision or between two or more political subdivisions, advise these entities of the conflict
2795 and make specific recommendations for the resolution of the conflict;
- 2796 (g) act as the governor's planning agent in planning public improvements and land use
2797 and, in this capacity, undertake special studies and investigations, participate in
2798 cross-jurisdictional planning activities, and, if needed, provide coordination;
- 2799 (h) provide information and cooperate with the Legislature or any of its committees in
2800 conducting planning studies;
- 2801 (i) cooperate and exchange information with federal agencies and local, metropolitan,
2802 or regional agencies as necessary to assist with federal, state, regional, metropolitan, and local
2803 programs;
- 2804 (j) make recommendations to the governor that the planning coordinator considers
2805 advisable for the proper development and coordination of plans for state government and
2806 political subdivisions;
- 2807 (k) assist in the interpretation of projections and analyses with respect to future growth
2808 needs; and
- 2809 (l) actively participate in informing the short-term and long-term budgetary needs of

2810 the state.

2811 (3) (a) The planning coordinator may:

2812 (i) perform regional and state planning and assist state government planning agencies
2813 in performing state planning;

2814 (ii) provide planning assistance to Indian tribes regarding planning for Indian
2815 reservations;

2816 (iii) assist city, county, metropolitan, and regional planning agencies in performing
2817 local, metropolitan, and regional planning, subject to Subsection (3)(b); and

2818 (iv) conduct, or coordinate with stakeholders to conduct, public meetings or hearings
2819 to:

2820 (A) encourage maximum public understanding of and agreement with the factual data
2821 and assumptions upon which projections and analyses are based; and

2822 (B) receive suggestions as to the types of projections and analyses that are needed.

2823 (b) In performing the duties described in Subsection (3)(a)(iii), to the extent possible
2824 the planning coordinator and any agent or designee of the planning coordinator shall recognize
2825 and promote the plans, policies, programs, processes, and desired outcomes of the city, county,
2826 metropolitan, or regional planning agency that the planning coordinator or the planning
2827 coordinator's agent or designee is assisting.

2828 (4) In assisting in the preparation of plans, policies, programs, or processes related to
2829 the management or use of federal lands or natural resources on federal lands in the state, the
2830 planning coordinator shall coordinate with the Public Lands Policy Coordinating Office created
2831 in Section [63L-11-201](#).

2832 Section 48. Section **72-6-107.5** is amended to read:

2833 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
2834 **insurance coverage.**

2835 (1) As used in this section:

2836 (a) "Aggregate" means the sum of all contracts, change orders, and modifications

2837 related to a single project.

2838 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

2839 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
2840 "operative" who:

2841 (i) works at least 30 hours per calendar week; and

2842 (ii) meets employer eligibility waiting requirements for health care insurance, which
2843 may not exceed the first day of the calendar month following 60 days after the day on which
2844 the individual is hired.

2845 (d) "Health benefit plan" means:

2846 (i) the same as that term is defined in Section [31A-1-301](#); or

2847 (ii) an employee welfare benefit plan:

2848 (A) established under the Employee Retirement Income Security Act of 1974, 29
2849 U.S.C. Sec. 1001 et seq.;

2850 (B) for an employer with 100 or more employees; and

2851 (C) in which the employer establishes a self-funded or partially self-funded group
2852 health plan to provide medical care for the employer's employees and dependents of the
2853 employees.

2854 (e) "Qualified health coverage" means the same as that term is defined in Section
2855 [26-40-115](#).

2856 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

2857 (g) "Third party administrator" or "administrator" means the same as that term is
2858 defined in Section [31A-1-301](#).

2859 (2) Except as provided in Subsection (3), the requirements of this section apply to:

2860 (a) a contractor of a design or construction contract entered into by the department on
2861 or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than
2862 \$2,000,000; and

2863 (b) a subcontractor of a contractor of a design or construction contract entered into by

2864 the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or
2865 greater than \$1,000,000.

2866 (3) The requirements of this section do not apply to a contractor or subcontractor
2867 described in Subsection (2) if:

2868 (a) the application of this section jeopardizes the receipt of federal funds;

2869 (b) the contract is a sole source contract; or

2870 (c) the contract is an emergency procurement.

2871 (4) A person that intentionally uses change orders, contract modifications, or multiple
2872 contracts to circumvent the requirements of this section is guilty of an infraction.

2873 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
2874 department that the contractor has and will maintain an offer of qualified health coverage for
2875 the contractor's employees and the employees' dependents during the duration of the contract
2876 by submitting to the department a written statement that:

2877 (i) the contractor offers qualified health coverage that complies with Section
2878 [26-40-115](#);

2879 (ii) is from:

2880 (A) an actuary selected by the contractor or the contractor's insurer;

2881 (B) an underwriter who is responsible for developing the employer group's premium
2882 rates; or

2883 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
2884 an actuary or underwriter selected by a third party administrator; and

2885 (iii) was created within one year before the day on which the statement is submitted.

2886 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
2887 shall provide the actuary or underwriter selected by an administrator, as described in
2888 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
2889 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
2890 requirements of qualified health coverage.

2891 (ii) A contractor may not make a change to the contractor's contribution to the health
2892 benefit plan, unless the contractor provides notice to:

2893 (A) the actuary or underwriter selected by an administrator, as described in Subsection
2894 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
2895 Subsection (5)(a) in compliance with this section; and

2896 (B) the department.

2897 (c) A contractor that is subject to the requirements of this section shall:

2898 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
2899 is subject to the requirements of this section shall obtain and maintain an offer of qualified
2900 health coverage for the subcontractor's employees and the employees' dependents during the
2901 duration of the subcontract; and

2902 (ii) obtain from a subcontractor that is subject to the requirements of this section a
2903 written statement that:

2904 (A) the subcontractor offers qualified health coverage that complies with Section
2905 [26-40-115](#);

2906 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
2907 underwriter who is responsible for developing the employer group's premium rates, or if the
2908 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
2909 underwriter selected by an administrator; and

2910 (C) was created within one year before the day on which the contractor obtains the
2911 statement.

2912 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
2913 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
2914 accordance with administrative rules adopted by the department under Subsection (6).

2915 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
2916 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

2917 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health

2918 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
2919 penalties in accordance with administrative rules adopted by the department under Subsection
2920 (6).

2921 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
2922 an offer of qualified health coverage described in Subsection (5)(a).

2923 (6) The department shall adopt administrative rules:

2924 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2925 (b) in coordination with:

2926 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

2927 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

2928 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
2929 accordance with Section 63A-5b-607;

2930 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

2931 (v) a public transit district in accordance with Section 17B-2a-818.5; and

2932 (vi) the Legislature's Administrative Rules Review Committee; and

2933 (c) that establish:

2934 (i) the requirements and procedures a contractor and a subcontractor shall follow to
2935 demonstrate compliance with this section, including:

2936 (A) that a contractor or subcontractor's compliance with this section is subject to an
2937 audit by the department or the Office of the Legislative Auditor General;

2938 (B) that a contractor that is subject to the requirements of this section shall obtain a
2939 written statement described in Subsection (5)(a); and

2940 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
2941 written statement described in Subsection (5)(c)(ii);

2942 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
2943 violates the provisions of this section, which may include:

2944 (A) a three-month suspension of the contractor or subcontractor from entering into

2945 future contracts with the state upon the first violation;

2946 (B) a six-month suspension of the contractor or subcontractor from entering into future
2947 contracts with the state upon the second violation;

2948 (C) an action for debarment of the contractor or subcontractor in accordance with
2949 Section [63G-6a-904](#) upon the third or subsequent violation; and

2950 (D) monetary penalties which may not exceed 50% of the amount necessary to
2951 purchase qualified health coverage for an employee and a dependent of the employee of the
2952 contractor or subcontractor who was not offered qualified health coverage during the duration
2953 of the contract; and

2954 (iii) a website on which the department shall post the commercially equivalent
2955 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
2956 the Department of Health, in accordance with Subsection [26-40-115](#)(2).

2957 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
2958 or subcontractor who intentionally violates the provisions of this section is liable to the
2959 employee for health care costs that would have been covered by qualified health coverage.

2960 (ii) An employer has an affirmative defense to a cause of action under Subsection
2961 (7)(a)(i) if:

2962 (A) the employer relied in good faith on a written statement described in Subsection
2963 (5)(a) or (5)(c)(ii); or

2964 (B) the department determines that compliance with this section is not required under
2965 the provisions of Subsection (3).

2966 (b) An employee has a private right of action only against the employee's employer to
2967 enforce the provisions of this Subsection (7).

2968 (8) Any penalties imposed and collected under this section shall be deposited into the
2969 Medicaid Restricted Account created in Section [26-18-402](#).

2970 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
2971 required by this section:

2972 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2973 or contractor under:

2974 (i) Section 63G-6a-1602; or

2975 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

2976 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
2977 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2978 or construction.

2979 (10) An administrator, including an administrator's actuary or underwriter, who
2980 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
2981 coverage of a contractor or subcontractor who provides a health benefit plan described in
2982 Subsection (1)(d)(ii):

2983 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
2984 unless the administrator commits gross negligence in preparing the written statement;

2985 (b) is not liable for any error in the written statement if the administrator relied in good
2986 faith on information from the contractor or subcontractor; and

2987 (c) may require as a condition of providing the written statement that a contractor or
2988 subcontractor hold the administrator harmless for an action arising under this section.

2989 Section 49. Section 78A-5-111 is amended to read:

2990 **78A-5-111. Transfer of court operating responsibilities -- Facilities -- Staff --**
2991 **Budget.**

2992 (1) A county's determination to transfer responsibility for operation of the district court
2993 to the state is irrevocable.

2994 (2) (a) Court space suitable for the conduct of judicial business as specified by the
2995 Judicial Council shall be provided by the state from appropriations made by the Legislature for
2996 these purposes.

2997 (b) The state may, in order to carry out its obligation to provide these facilities, lease
2998 space from a county, or reimburse a county for the number of square feet used by the district.

2999 Any lease and reimbursement shall be determined in accordance with the standards of the
3000 [~~State Building Board~~] Division of Facilities Construction and Management applicable to state
3001 agencies generally. A county or municipality terminating a lease with the court shall provide
3002 written notice to the Judicial Council at least one year prior to the effective date of the
3003 termination.

3004 (c) District courts shall be located in municipalities that are sites for the district court
3005 or circuit court as of January 1, 1994. Removal of the district court from the municipality shall
3006 require prior legislative approval by joint resolution.

3007 (3) The state shall provide legal reference materials for all district judges' chambers
3008 and courtrooms, as required by Judicial Council rule. Maintenance of county law libraries shall
3009 be in consultation with the court executive of the district court.

3010 (4) (a) At the request of the Judicial Council, the county or municipality shall provide
3011 staff for the district court in county seats or municipalities under contract with the
3012 administrative office of the courts.

3013 (b) Payment for necessary expenses shall be by a contract entered into annually
3014 between the state and the county or municipality, which shall specifically state the agreed costs
3015 of personnel, supplies, and services, as well as the method and terms of payment.

3016 (c) Workload measures prepared by the state court administrator and projected costs
3017 for the next fiscal year shall be considered in the negotiation of contracts.

3018 (d) Each May 1 preceding the general session of the Legislature, the county or
3019 municipality shall submit a budget request to the Judicial Council, the governor, and the
3020 legislative fiscal analyst for services to be rendered as part of the contract under Subsection
3021 (4)(b) for the fiscal year immediately following the legislative session. The Judicial Council
3022 shall consider this information in developing its budget request. The legislative fiscal analyst
3023 shall provide the Legislature with the county's or municipality's original estimate of expenses.
3024 By June 15 preceding the state's fiscal year, the county and the state court administrator shall
3025 negotiate a contract to cover expenses in accordance with the appropriation approved by the

3026 Legislature. The contracts may not include payments for expenses of service of process,
3027 indigent defense costs, or other costs or expenses provided by law as an obligation of the
3028 county or municipality.

3029 Section 50. Section **79-2-404** is amended to read:

3030 **79-2-404. Contracting powers of department -- Health insurance coverage.**

3031 (1) As used in this section:

3032 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
3033 related to a single project.

3034 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

3035 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
3036 "operative" who:

3037 (i) works at least 30 hours per calendar week; and

3038 (ii) meets employer eligibility waiting requirements for health care insurance, which
3039 may not exceed the first day of the calendar month following 60 days after the day on which
3040 the individual is hired.

3041 (d) "Health benefit plan" means:

3042 (i) the same as that term is defined in Section [31A-1-301](#); or

3043 (ii) an employee welfare benefit plan:

3044 (A) established under the Employee Retirement Income Security Act of 1974, 29
3045 U.S.C. Sec. 1001 et seq.;

3046 (B) for an employer with 100 or more employees; and

3047 (C) in which the employer establishes a self-funded or partially self-funded group
3048 health plan to provide medical care for the employer's employees and dependents of the
3049 employees.

3050 (e) "Qualified health coverage" means the same as that term is defined in Section
3051 [26-40-115](#).

3052 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

3053 (g) "Third party administrator" or "administrator" means the same as that term is
3054 defined in Section 31A-1-301.

3055 (2) Except as provided in Subsection (3), the requirements of this section apply to:

3056 (a) a contractor of a design or construction contract entered into by, or delegated to, the
3057 department or a division, board, or council of the department on or after July 1, 2009, if the
3058 prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

3059 (b) a subcontractor of a contractor of a design or construction contract entered into by,
3060 or delegated to, the department or a division, board, or council of the department on or after
3061 July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

3062 (3) This section does not apply to contracts entered into by the department or a
3063 division, board, or council of the department if:

3064 (a) the application of this section jeopardizes the receipt of federal funds;

3065 (b) the contract or agreement is between:

3066 (i) the department or a division, board, or council of the department; and

3067 (ii) (A) another agency of the state;

3068 (B) the federal government;

3069 (C) another state;

3070 (D) an interstate agency;

3071 (E) a political subdivision of this state; or

3072 (F) a political subdivision of another state; or

3073 (c) the contract or agreement is:

3074 (i) for the purpose of disbursing grants or loans authorized by statute;

3075 (ii) a sole source contract; or

3076 (iii) an emergency procurement.

3077 (4) A person that intentionally uses change orders, contract modifications, or multiple
3078 contracts to circumvent the requirements of this section is guilty of an infraction.

3079 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the

3080 department that the contractor has and will maintain an offer of qualified health coverage for
3081 the contractor's employees and the employees' dependents during the duration of the contract
3082 by submitting to the department a written statement that:

3083 (i) the contractor offers qualified health coverage that complies with Section
3084 26-40-115;

3085 (ii) is from:

3086 (A) an actuary selected by the contractor or the contractor's insurer;

3087 (B) an underwriter who is responsible for developing the employer group's premium
3088 rates; or

3089 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
3090 an actuary or underwriter selected by a third party administrator; and

3091 (iii) was created within one year before the day on which the statement is submitted.

3092 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
3093 shall provide the actuary or underwriter selected by an administrator, as described in
3094 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
3095 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
3096 requirements of qualified health coverage.

3097 (ii) A contractor may not make a change to the contractor's contribution to the health
3098 benefit plan, unless the contractor provides notice to:

3099 (A) the actuary or underwriter selected by an administrator, as described in Subsection
3100 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
3101 Subsection (5)(a) in compliance with this section; and

3102 (B) the department.

3103 (c) A contractor that is subject to the requirements of this section shall:

3104 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
3105 is subject to the requirements of this section shall obtain and maintain an offer of qualified
3106 health coverage for the subcontractor's employees and the employees' dependents during the

3107 duration of the subcontract; and

3108 (ii) obtain from a subcontractor that is subject to the requirements of this section a
3109 written statement that:

3110 (A) the subcontractor offers qualified health coverage that complies with Section
3111 [26-40-115](#);

3112 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
3113 underwriter who is responsible for developing the employer group's premium rates, or if the
3114 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
3115 underwriter selected by an administrator; and

3116 (C) was created within one year before the day on which the contractor obtains the
3117 statement.

3118 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
3119 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
3120 accordance with administrative rules adopted by the department under Subsection (6).

3121 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
3122 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

3123 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
3124 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
3125 penalties in accordance with administrative rules adopted by the department under Subsection
3126 (6).

3127 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
3128 an offer of qualified health coverage described in Subsection (5)(a).

3129 (6) The department shall adopt administrative rules:

3130 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3131 (b) in coordination with:

3132 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

3133 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);

- 3134 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
3135 accordance with Section [63A-5b-607](#);
- 3136 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);
- 3137 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and
- 3138 (vi) the Legislature's Administrative Rules Review Committee; and
- 3139 (c) that establish:
- 3140 (i) the requirements and procedures a contractor and a subcontractor shall follow to
3141 demonstrate compliance with this section, including:
- 3142 (A) that a contractor or subcontractor's compliance with this section is subject to an
3143 audit by the department or the Office of the Legislative Auditor General;
- 3144 (B) that a contractor that is subject to the requirements of this section shall obtain a
3145 written statement described in Subsection (5)(a); and
- 3146 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
3147 written statement described in Subsection (5)(c)(ii);
- 3148 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3149 violates the provisions of this section, which may include:
- 3150 (A) a three-month suspension of the contractor or subcontractor from entering into
3151 future contracts with the state upon the first violation;
- 3152 (B) a six-month suspension of the contractor or subcontractor from entering into future
3153 contracts with the state upon the second violation;
- 3154 (C) an action for debarment of the contractor or subcontractor in accordance with
3155 Section [63G-6a-904](#) upon the third or subsequent violation; and
- 3156 (D) monetary penalties which may not exceed 50% of the amount necessary to
3157 purchase qualified health coverage for an employee and a dependent of an employee of the
3158 contractor or subcontractor who was not offered qualified health coverage during the duration
3159 of the contract; and
- 3160 (iii) a website on which the department shall post the commercially equivalent

3161 benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the
3162 Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

3163 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
3164 or subcontractor who intentionally violates the provisions of this section is liable to the
3165 employee for health care costs that would have been covered by qualified health coverage.

3166 (ii) An employer has an affirmative defense to a cause of action under Subsection
3167 (7)(a)(i) if:

3168 (A) the employer relied in good faith on a written statement described in Subsection
3169 (5)(a) or (5)(c)(ii); or

3170 (B) the department determines that compliance with this section is not required under
3171 the provisions of Subsection (3).

3172 (b) An employee has a private right of action only against the employee's employer to
3173 enforce the provisions of this Subsection (7).

3174 (8) Any penalties imposed and collected under this section shall be deposited into the
3175 Medicaid Restricted Account created in Section [26-18-402](#).

3176 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
3177 required by this section:

3178 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3179 or contractor under:

3180 (i) Section [63G-6a-1602](#); or

3181 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

3182 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3183 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3184 or construction.

3185 (10) An administrator, including an administrator's actuary or underwriter, who
3186 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
3187 coverage of a contractor or subcontractor who provides a health benefit plan described in

3188 Subsection (1)(d)(ii):

3189 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
3190 unless the administrator commits gross negligence in preparing the written statement;

3191 (b) is not liable for any error in the written statement if the administrator relied in good
3192 faith on information from the contractor or subcontractor; and

3193 (c) may require as a condition of providing the written statement that a contractor or
3194 subcontractor hold the administrator harmless for an action arising under this section.

3195 **Section 51. Repealer.**

3196 This bill repeals:

3197 Section [63A-5b-201](#), **Creation of state building board -- Composition --**

3198 **Appointment -- Per diem and expenses -- Board officers.**

3199 Section [63A-5b-202](#), **State Building Board powers and duties.**

3200 Section [63A-5b-203](#), **Meetings of state building board -- Rules of procedure --**

3201 **Quorum.**

3202 Section 52. **Effective date.**

3203 This bill takes effect on May 4, 2022, except that the amendments to Section

3204 [53B-2a-112](#) (Effective 07/01/22) take effect on July 1, 2022.